

July 11, 2006



**TRANSCRIPT**  
**July 11, 2006**

**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

George Leventhal, President	Marilyn J. Praisner, Vice President
Phil Andrews	Howard Denis
Nancy Floreen	Michael Knapp
Thomas Perez	Steven A. Silverman
	Michael Subin



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1 [MUSIC]

2  
3 Council President Leventhal,  
4 Good morning, everyone, the County Council is in session. I'm going to reclaim my  
5 microphone.

6  
7 [LAUGHTER]

8  
9 Councilmember Silverman,  
10 I thought maybe you were running for Attorney General, having moved down two seats.

11  
12 Council President Leventhal,  
13 We are joined by our good friend, the Reverend Don Kelly from an institution that many  
14 of us are familiar with, the People's Community Baptist Church and let us stand for an  
15 invocation.

16  
17 Reverend Donald Kelly,  
18 Amen. Let us pray. Father, we take a few moments before the beginning of this meeting  
19 just to invite your presence in this room today. We're so thankful for those who are here  
20 and thankful for the men and women who are the leader service who come as County  
21 Councilmen to lead us and to direct us. I pray for their well being, pray for their health  
22 and strength. I pray for the agenda today as we go through it, that it will be an agenda  
23 that will serve the County, and serve the people of this County, but most of all that you  
24 will be served as well. Thank you for this day and now I ask you for blessings upon this  
25 entire day and this entire County, that the influence of this County will not only be here  
26 but nationwide. That we will see your glory in the name of the one who gave his life for  
27 us we pray. Amen.

28  
29 Council President Leventhal,  
30 Amen. Reverend Kelly, just while you're here, let me say we had a meeting at the end of  
31 June with Pastors from around the community and the questions among others that was  
32 posed was, what would a real partnership between County government and the state's  
33 community look like? And we had a very fruitful conversation and as I think about what  
34 form and excellent working relationship between County government and the faith  
35 community might take, I think of the People's Community Baptist Church which does an  
36 extraordinary job of providing healthcare through the People's Community Wellness  
37 Clinic, providing services to the elderly. We were pleased to be able to support the  
38 church's work with a grant this year and in many ways in which the People's Community  
39 Baptist Church serves the community and addresses some of the vital needs of the  
40 people who are suffering and who need help. So, we thank you for being here and on  
41 behalf of the County Council, take our greeting back as well to Pastor Haywood  
42 Robinson



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1 Reverend Donald Kelly,  
2 Thank you, and I think the dialogue that's taken place is very helpful for both the church  
3 and the community. Thank you.

4  
5 Council President Leventhal,  
6 Thank you. Ms. Praisner, did you want to comment as well?

7  
8 Councilmember Praisner,  
9 Well actually I wanted to ask for a moment of silence for the young man of our  
10 community who was our fatality during the storm and, unfortunately, was not known until  
11 late in the process. And I think it would be appropriate if we had a moment of silence for  
12 him as well.

13  
14 Council President Leventhal,  
15 Thank you, Ms. Praisner. Okay, we'll move to general business. Are there agenda and  
16 calendar changes, Ms. Lauer?

17  
18 Linda Lauer,  
19 There are three additions to the Consent Calendar, introduction to the special  
20 appropriation of County Government's FY '07 Operating Budget, it's \$293,580 for the  
21 adult dental care services. Action on a resolution to approve the abandonment on a  
22 portion of unimproved Legion Drive, [MONTCO] addition, Damascus, and of the  
23 unimproved Henry Estate subdivision in Bethesda. Just a notice that the Education  
24 Committee planned for Thursday, July 13th has been cancelled and we do have two  
25 petitions.

26  
27 Council President Leventhal,  
28 Okay what, are the petitions?

29  
30 Linda Lauer,  
31 We have one supporting residential development on the web track and one opposing  
32 the demolition of the COMSAT building in Clarksburg.

33  
34 Council President Leventhal,  
35 Thank you very much.

36  
37 Linda Lauer,  
38 Thank you.

39  
40 Council President Leventhal,  
41 Are there minutes for approval?



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1 Council Clerk,

2 Yes, you have minutes of May 15th and 25th for approval.

3  
4 Council President Leventhal,

5 Is there a motion to approve the minutes of May 15th and 25th?

6  
7 Councilmember Floreen,

8 So moved.

9  
10 Councilmember Praisner,

11 Second.

12  
13 Council President Leventhal,

14 Ms. Floreen moved and Vice President Praisner has seconded approval of the minutes  
15 for those dates. Those in favor will signify by raising their hands. It is unanimous among  
16 those present. We will turn now to the Consent Calendar, can I get a motion to approve  
17 the Consent Calendar.

18  
19 Councilmember Praisner,

20 Second.

21  
22 Council President Leventhal,

23 Mr. Knapp has moved and Vice President Praisner seconded approval of the Consent  
24 Calendar. I will have some comments on items D and E, there is someone I am waiting  
25 for who I know is in the building, so let me see if other Councilmembers have comments  
26 at this time. Vice President Praisner.

27  
28 Councilmember Praisner,

29 I wanted to comment on two items, I wanted to comment on G and H. On G, the packet  
30 refers to the recommendation from the Planning Housing and Economics Development  
31 Community regarding the Executive Reg on disruptive behavior recreational programs. I  
32 think the one issue that I wanted to highlight is the issue of supervising, taking place at  
33 multiple facilities, meaning none, and where those facilities might be non-government  
34 facilities. I am not sure that as we went through the conversation that all of those issues  
35 are fully resolved within the feedback from the Executive branch. I am prepared to  
36 support the resolution as we did in Committee, but I think one: that issue of non-  
37 government, non-County government facilities, and how you deal with that issue, and  
38 secondly: the whole point about hoping that we would look at our regulations such that  
39 we don't need to create individual regulations on disruptive behavior or other things by  
40 department. That we look at perhaps, writing regulations that are may be more generic  
41 in the future, I think, would be helpful. Those are my comments on that and the second  
42 comment on H, which is the resolution on the, to approve the mutual aid agreement



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1 between the County and the National Institutes of Health. I very much appreciate the  
2 response from the Fire Services about the issues of in-building coverage and of  
3 interoperability. There are coverage challenges which are highlighted on, and the fact  
4 that you need to use a variety of talk groups. I would recommend that the fire  
5 department work with NIH's department on the sharing, or use of Kaplan as a data  
6 chatroom option, as well as the 800 megahertz given the fact that the federal, this is a  
7 partnership among federal government agencies as well as local governments in the  
8 region. And NIH not being one of the public safety federal agencies may not be familiar  
9 with the capacity to have their public safety folks using this system, the Kaplan program  
10 as well. So, I would just urge that Fire pursue with them through members of the Kaplan  
11 staff, some of whom are former members of DFRS. Thank you.

12  
13 Council President Leventhal,

14 Are there any other comments on the Consent Calendar? Okay, if not, I want to say first  
15 of all, I want to thank my colleagues consistently over this term for their support and  
16 participation in our efforts to move towards greater use of non polluting, clean  
17 renewable energy. Last night I saw Al Gore's movie. I know some of my colleagues  
18 have seen it. It's absolutely worth seeing. I think through Al Gore's efforts and many  
19 other efforts, all of us as a society and certainly the nine of us here on this Council are  
20 far more cognizant than I think, than I think we as a society have been in the past of the  
21 need to consider the footprint that we leave through our regular daily activities through  
22 our use of power through the way we build buildings, through the way we get from  
23 place-to-place, and I have seen significant movement in a good direction among my  
24 colleagues here on this Council. We're all spending a great deal more time thinking and  
25 talking and acting on issues of environmental protection and our vote in the next few  
26 minutes to amend the County's energy policy further for the second time in this term, to  
27 move to 20% of our total electricity use will emit no carbon or another pollutants will  
28 contribute not at all to climate change or global warming is a very, very significant step,  
29 and I just wanted to note that every move that we have made in this direction has a the  
30 unanimous support of this entire body and I appreciate that and I know that the  
31 environmental community appreciates it, and I want to thank Eric Hoffman and Susan  
32 Kirby who are here from the Department of Environmental Protection. They're both new  
33 staff to the County and they going to continue to move us towards greater sustainability,  
34 greater thoughtfulness in the way that we use resources and continue to move us away  
35 from the use of fossil fuels, and continue to work with me and other Councilmembers  
36 and, of course, the Executive Branch to be as creative as we possibly can within the  
37 resources that we have to reduce our use of fossil fuels. The urgency of doing this  
38 couldn't be greater and I know we appreciate that. There's a risk when something is so  
39 much on the public minds that people become tired of thinking about it, and yet we all  
40 have a great deal more to learn and certainly in the area of storm water protection. I've  
41 had conversations the last several days as I know my colleagues have about the  
42 urgency of improving the way in which we continue to develop the County, the way in



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1 which we build buildings, the way where we landscape our own yards and I need to get  
2 educated on that. I know many things, I am not embarrassed to admit there are many  
3 things I don't know, and working with DEP and working with my colleagues and with the  
4 Executive Branch. I think we're all going to graduate school on issues of sustainability,  
5 living in a healthier balance with our natural surroundings and especially reducing our  
6 use of fossil fuels for which the need is so urgent. So, on both of these items this  
7 morning, the amendment to our energy policy and the implementation now of the Clean  
8 Energy Rewards Program, which this Council passed unanimously a year ago, I think  
9 we can take great pride in our County's leadership effort even as we acknowledge that  
10 there is much, much more to do that we're struggling to catch up with the urgency of the  
11 need for action in this area, and that something that may have seen ground breaking  
12 four years ago when we did it, to purchase 5% of our electricity now, society as a whole,  
13 is so aware of the urgency of the need, that four years later, that seems like a very small  
14 step even though at the time it was highly significant and so this resolution that we  
15 passed today will move us to 20%, by the time we get five years down the road we may  
16 in fact be far ahead of 20%, because the need is so great. But I appreciate the support  
17 of my colleagues, I appreciate the work of Mr. Hoffman and Ms. Kirby and Director  
18 Caldwell and County Executive Doug Duncan, who has been supportive of our efforts  
19 every step here and there is more to be done. I appreciate the support of my  
20 colleagues. I hoped he would be here but I will give him the tape. David Bronstein is the  
21 leader of a County-wide group called Montgomery County Student Environmental  
22 Activists and he brought to my attention the desire of the group of high school students  
23 for this resolution to get us to 20% clean energy. And they put on a super rally here in  
24 support of this cause, they got a lot of publicity, they got on the news on television and  
25 they delivered us 3,000 petition signatures in support of our efforts to move to 20% use  
26 of clean energy. There is no doubt in my mind that the public and particularly the young  
27 public who have more years than we have to deal with the consequences of our abuse  
28 of fossil fuels, our excess of use of fossil fuels, supports what we're doing and is aware  
29 of what we're doing and I'm proud to have been a part of it and I'm very, very pleased to  
30 have the unanimous support of my colleagues and I thank my colleagues. So with that,  
31 the motion to support the Consent Calendar is now before us and those in favor of  
32 adopting the Consent Calendar will signify by raising their hands. Ms. Floreen, may I  
33 assume you're in support of the Consent Calendar? It's unanimous among those  
34 present. Okay, we turn now to Legislative Session. Is there a Legislative Journal for  
35 approval?

36  
37 Council Clerk,  
38 You have the journal of June 20th for approval.

39  
40 Council President Leventhal,  
41 Ms. Praisner moved and Mr. Knapp seconded the Legislative Journal for June 20th,  
42 those in favor of its approval will signify by raising their hands. It is unanimous among



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1 those present. We have no bills for introduction. We do have two bills before us for final  
2 reading. The first is Bill 12-06, Transmission Facility Coordination. Chairwoman  
3 Praisner.

4  
5 Councilmember Praisner,

6 Yes, this legislation deals with the members of the facility, Transmission Facility  
7 Coordinating Group. That's the group that we used the issues with the siting of power,  
8 affectionately known as the Tower Group or the Tower Committee. The request comes  
9 from the County Executive to replace the Department of Environmental Protection as a  
10 member of the group with the Department of Permitting Services. The Committee  
11 recommends approval, especially since we received assurance that to the extent of site  
12 that is being selected, or requested for placement of the equipment, which obviously is  
13 associated with the tower, as well as the tower, may have some environmental issues  
14 such as issue streaming issues, et cetera, that the Department of Environmental  
15 Protection would have an opportunity to participate. We were assured that they would  
16 be called in as needed, but would not sit regularly on the group. And with that, the  
17 Committee recommends approval.

18  
19 Council President Leventhal,

20 Okay, are there any other comments on Bill 12-06? Hearing none, the Clerk will call the  
21 roll.

22  
23 Council Clerk,  
24 Mr. Denis?

25  
26 Councilmember Denis,  
27 Yes.

28  
29 Council Clerk,  
30 Ms. Floreen?

31  
32 Councilmember Floreen,  
33 Yes.

34  
35 Council Clerk,  
36 Mr. Subin?

37  
38 Councilmember Subin,  
39 Yes.

40  
41 Council Clerk,  
42 Mr. Silverman?





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Councilmember Silverman,  
Yes.

Council Clerk,  
Mr. Knapp.

Councilmember Knapp,  
Yes.

Council Clerk,  
Mr. Andrews?

Councilmember Andrews,  
Yes.

Council Clerk,  
Ms. Praisner?

Councilmember Praisner,  
Yes.

Council Clerk,  
Mr. Leventhal?

Council President Leventhal,  
Yes, the Bill passes 8-0. Next before the County Council is Bill 15-06 relating to  
offenses, loitering, Chairman Andrews.

Councilmember Andrews,  
Thank you, Mr. President. This is a Bill that was put in at the request of the County  
Executive to make sure that our current law conforms to constitutional standards, and  
the public hearing was held at which Councilmember Subin raised concerns about the  
use of the term loitering at all. The Committee looked at that and agreed that loitering in  
and of itself, agreed with Mr. Subin, should not be considered a crime, and what you  
really want to get at, because loitering is a status, not an action. And so the action that  
the County is interested in prohibiting is unlawful interference with public passageway or  
disorderly conduct. And so the Committee is recommending that the law be amended to  
address it in that way, and the key provisions in this are really on circle 3 where, of the  
packet, where we amended it to say disturbing the public peace or disorderly conduct.  
"Prohibited conduct, an individual must not in, at, on or in a public place or place open  
to the public interfere with or hinder the free passage of the pedestrian or vehicular





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1 traffic or incite unlawful conduct by words or intentional conduct, which is likely to  
2 produce imminent or unlawful conduct." So the focus is on conduct and the results of  
3 that conduct rather than simply standing around on the street corner. Maryland doesn't  
4 have a criminal statute against loitering. The focus is on the conduct, and the  
5 Committee agrees that we should conform County law in that way and ensure that it's  
6 not unconstitutionally vague. And so the Committee recommendation is to amend it in  
7 that way and also to agree with the County Attorney's office to add conduct would be  
8 violating a condition of parole or probation and that also is a reason for temporary  
9 detention. In addition, the Committee recommends replacing orderly with lawful to  
10 describe picketing. So that the picketing simply must conform to whatever the law is  
11 regarding it rather than be subjectively orderly or disorderly. So those are the  
12 Committee's recommendations to the Council.

13  
14 Council President Leventhal,

15 Thank you Mr. Chairman for that explanation. Could you give a succinct description  
16 what have, I'm quoting Ms. Floreen from the recent public hearing what, is the problem  
17 that this legislation will solve?

18  
19 Councilmember Andrews,

20 Well, you may have a situation where individuals on a public street and, again, private  
21 property, you have trespassing as a prohibition, but on a public sidewalk, someone  
22 might be interfering with people walking by. And this would come into play in that  
23 instance for example. So, it goes to the interference or the reasonable, reasonably  
24 discerned intention to commit a crime based on the judgment of the Police Officer, that  
25 would trigger this.

26  
27 Council President Leventhal,

28 Is this -- maybe Mr. Hansen can answer. Is the intent of the Executive branch sending  
29 this over to us, to make it easier for law enforcement to address a public nuisance, or is  
30 it in fact to narrow the circumstances and more clearly define the circumstances under  
31 which law enforcement may address the public nuisance?

32  
33 Marc Hansen,

34 The legislation was, was motivated by a relatively recent Supreme Court case which,  
35 addressed a statute, a similar statute in Colorado. Denver, I think, wasn't it?

36  
37 Sonya Healy,  
38 Actually Nevada.

39  
40 Marc Hansen,

41 Nevada, I'm sorry. Nevada. Some place out west. They all merge together after awhile.  
42 In which the issue was whether a Police Officer could ask an individual for identification.



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1 Not identification but to identify themselves. What was their name and the Supreme  
2 Court said that that did pass constitutional muster. We looked at our current statute in  
3 light of that Supreme Court case, and decided it needed to be tweaked to be more in  
4 conformance with the Supreme Court decision. So that we rewrote the statute, tried to  
5 clean up some of the ambiguities in the statute and added a provision that said the  
6 Police Officer could ask for the name of the individual if they had an articulable reason  
7 to do so.

8  
9 Council President Leventhal,  
10 In effect, this is really housekeeping in the County Code.

11  
12 Marc Hansen,  
13 Yes.

14  
15 Council President Leventhal,  
16 Trying to clean up language in the code to make sure it has no constitutional problems.

17  
18 Marc Hansen,  
19 Right, And the Committee's work to eliminate even the concept of loitering is probably  
20 an excellent thing. It was really cleared away the under brush.

21  
22 Council President Leventhal,  
23 Vice President Praisner.

24  
25 Councilmember Praisner,  
26 Oh, I'm sorry.

27  
28 Council President Leventhal,  
29 Okay, Chairman Andrews, did you want to add anything?

30  
31 Councilmember Andrews,  
32 Not really other than I think it narrows the situations where someone would be asking  
33 for ID, it has to be certain conduct rather than simply standing around.

34  
35 Council President Leventhal,  
36 Okay, thank you very much. So Bill 15-06 is recommended to the full Council by the  
37 Public Safety Committee, the clerk will call the roll.

38  
39 Council Clerk,  
40 Mr. Denis?

41  
42 Councilmember Denis,



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1 Yes.  
2  
3 Council Clerk,  
4 Ms. Floreen?  
5  
6 Councilmember Floreen,  
7 Yes.  
8  
9 Council Clerk,  
10 Mr. Subin?  
11  
12 Councilmember Subin,  
13 Yes.  
14  
15 Council Clerk,  
16 Mr. Silverman?  
17  
18 Councilmember Silverman,  
19 Yes.  
20  
21 Council Clerk,  
22 Mr. Knapp?  
23  
24 Councilmember Knapp,  
25 Yes.  
26  
27 Council Clerk,  
28 Mr. Andrews?  
29  
30 Councilmember Andrews,  
31 Yes.  
32  
33 Council Clerk,  
34 Ms. Praisner?  
35  
36 Councilmember Praisner,  
37 Yes.  
38  
39 Council Clerk,  
40 Mr. Leventhal?  
41  
42 Council President Leventhal,



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1 Mr. Leventhal votes yes, Mr. Perez, we're voting on Bill 15-06, which is essentially a  
2 housekeeping measure to more clearly define what loitering is, and Mr. Perez votes  
3 yes. Okay, the Bill passes unanimously. We now turn to a work session on the charter  
4 amendments recommended by the Charter Review Commission. Mr. Faden or Ms.  
5 Healy, which one of you wants to give us a brief walk through of the recommendations  
6 before the Council.

7  
8 Mike Faden,

9 Very briefly, the Charter Review Commission this year recommended two amendments,  
10 which I believe are the same two amendments it recommended two years ago. The first  
11 one has to do with the compensation of Councilmembers, and essentially said that for  
12 purposes of considering compensation, membership on the Council will be considered a  
13 full-time position. It does not directionally say what the compensation would be, it's  
14 intended as guidance for whoever sets the compensation, which in the past is  
15 recommended by Compensation Commission. Second amendment...

16  
17 Council President Leventhal,

18 Let me pause. Are there no questions on that? I see none.

19  
20 Councilmember Subin,

21 You just looking for questions not comments?

22  
23 Council President Leventhal,

24 Or comments, feel free. I just want to make sure Councilmembers have an opportunity  
25 to discuss this, and Mr. Subin you have the floor.

26  
27 Councilmember Subin,

28 Thank you, I probably not surprisingly am opposed to this. For a number of reasons. I  
29 have yet to see any reason why the Council is a full-time job. One certainly can make it  
30 so. In fact, one could, I think it's clear, spend 120 hours a week at this if they wanted.  
31 That said, I think there is a lot going on in the community and a lot of experiencing that  
32 one can find working in the private sector and doing things, realizing certain issues that  
33 are going on, and being able to bring them to the Council and expound them. Not, not  
34 as a result of discussions with others, not from the theoretical sense, but from the  
35 practical sense, and I think that those are invaluable. I know those who do work outside  
36 of the Council have brought issues in that they have found. I must say that my work I  
37 have found a number of issues which, which are buried, frankly. They're down  
38 somewhere else. They're some of the don't happen here issues that are able to bring it  
39 back, and I think the prohibition against doing that is certainly a long way to go. I would  
40 be opposed to the Bill that said you had have an outside job also, but I also think is that  
41 by keeping this as a full-time job that the pressure is going to be there, whether it's  
42 sooner or later, and I'm not sure if it's sooner or later to increase salaries and then make



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1 the salary an attraction to being here. That salary while not pauper's salary by any  
2 means right now, certainly is not one that you're going to get rich on, or be able to raise  
3 a family in Montgomery County in the style that they would want to be raised.

4  
5 Council President Leventhal,  
6 Ms. Floreen.

7  
8 Councilmember Floreen,  
9 Thank you, Mr. President. I wanted to just signify my agreement with Mr. Subin's  
10 comments. I believe as well one of the rationales that was advanced for identifying this  
11 as a full-time position was that it would attract more candidates, that compensation  
12 would attract more candidates for the post. Obviously, this year disproves that. I believe,  
13 last count, there are 16 candidates for at-large positions, including incumbents. That is  
14 just, to me that money is no deterrent. The real question is I think that everyone is  
15 evidencing as a real commitment to public service. We'll let the voters decide that issue,  
16 but the fact of the matter is that there is significant interest in these positions without  
17 regard to compensation. And I do think that by stating it, stating that it would be treated  
18 as a full-time job for compensation purposes, it really does discourage folks from other  
19 kinds of community involvement or other professional obligations a hat bring a  
20 tremendous richness to the experience. I spend, I do treat, I'm privileged enough to be  
21 able to treat this as a full-time job, at least for the time being, and I find that helpful but I  
22 don't think that should be a requirement for everyone. I think everyone chooses this  
23 position and the time they put into it by weighing a variety of factors, and I really don't  
24 think the compensation should be driving that. So I would agree that Mr. Subin and I  
25 would not support this amendment.

26  
27 Council President Leventhal,  
28 Mr. Andrews.

29  
30 Councilmember Andrews,  
31 Thank you. Well, the, do we have members of the Charter Review Commission with us?  
32 No, okay. Well I think what this get's at, and of course this proposed amendment  
33 doesn't limit outside employment, but I think it recognizes a reality that Councilmembers  
34 put in at least 40 hours a week on average, often a lot more than that, in order to do this  
35 job well. We have a budget of almost \$4 billion that comes before us from the different  
36 agencies, we have numerous local laws and regulations, we have several master plans,  
37 we have a lot of Committee work and we have a lot of constituent service to do, and  
38 those are things that we react to. They're also things that Councilmembers may initiate,  
39 which may add to that as well. So, this does not the limit what Councilmembers or future  
40 Councilmembers may do on the side, but it does recognize that this is a 40-hour a week  
41 or more position, and I don't think or know how anyone can dispute that given the  
42 workload that all of us experience up here in which the Charter Review Commission



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1 strongly acknowledged in its report. That this has become a job that's 40 hours a week  
2 or more, whether or not that is all one does is up to be individual, but I think it is a well-  
3 founded recommendation, I support it.

4  
5 Council President Leventhal,  
6 Mr. Subin.

7  
8 Councilmember Subin,  
9 I think the points that Mr. Andrews make are extremely valid. The one question they  
10 would have is is there wording in there, the assumption or the intent that it would be  
11 treated as with Executive's job and that one still says that's it, you're the Executives and  
12 there is no more. I think if what Mr. Andrews is saying is correct and that somebody will  
13 still be allowed to do that, that that is a different matter.

14  
15 Council President Leventhal,  
16 If I could direct Mr. Subin's attention to the memorandum agenda item number 5, below  
17 the middle of page 2. It's the proposed language in section 107 in that memo and it  
18 doesn't address or restrict outside employment.

19  
20 Councilmember Subin,  
21 And that's why I'm looking at Mr. Faden saying what, what is intent, because now, I  
22 guess one of my answers would be if I had to take the side of saying well this it's full-  
23 time, but you could, would be, well, there is one section of the charter that says that the  
24 Executive is full-time and can not have any outside employment. This says it's full time  
25 and then it's silent, so clearly the intent was you could do that and if that's the intent or  
26 was it an oversight that that wording is not there.

27  
28 Council President Leventhal,  
29 As stated in the packet, Mr. Subin.

30  
31 Councilmember Subin,  
32 I'm asking Mr. Faden.

33  
34 Mike Faden,  
35 That was the intent of the similar language that you cited is in section 203 of the charter,  
36 which says the County Executive shall not, during the term of office, the County  
37 Executive shall devote full-time to the duties of the office, and shall not participate in any  
38 private occupation for compensation, no similar language is recommended for here, so  
39 the intent was to allow the members to have outside occupations.

40  
41 Councilmember Subin,  
42 It was not an oversight then which then gives credence to what Mr. Andrews is saying.



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Council President Leventhal,

Indeed, Mr. Subin. The commission specifically addressed that, and as the, in the deliberations and as the packet states, and I'm reading from the packet, the commission concluded that the voters should decide whether an individual Councilmember's outside employment activities interfere or threaten to interfere with Council service, that the member shouldn't be elected or re-elected.

Councilmember Subin,

Then you have to change the wording for the ethics commission, because that's their job which they have to do anyway even with part time.

Council President Leventhal,

So not only did the commission not do this as an oversight, they explicitly discussed this and came to the conclusion that's before the Council now.

Councilmember Subin,

What is the advantage of considering it full-time? I mean I'm not, if what Phil is saying is correct, then it just gets to the issue of pressure at some point that the salary should be higher. I'm not sure if you do not have the same restriction you that have with the Executive. And would still have, despite what they say, unless you change the Ethics Commission participation in the judgment of that outside jobs interfering or being a conflict of interest. Then I'm not sure what this language actually does. Except to say in the charter, well, we recognize it's a full-time job. But, so what? I'm not trying to be sarcastic or cynical, I'm trying to get, I mean to me there is no difference between the status quo and the change being proposed and that it adds, somebody will, I'll tell you right now, somebody will say, well, since it's a full-time job, the Councilmembers ought to have the same salaries as the County Executives and put them in the same stack. We're trying to believe this up but that will happen.

Council President Leventhal,

Are you going to yield to other Councilmembers, Mr. Subin? Mr. Perez.

Councilmember Perez,

Thank you, I think what I'm hearing in this discussion is that we all agree that as a factual matter, this is a full-time job that. Is to state the obvious. The question that I continue to have is and I might be asking the same question Mr. Subin asked. There appears also to be an agreement that we, if people want to have two full-time jobs, which has frankly been the reality of my world for the last 3 1/2 years, that is something that we don't want to preclude that Charter Commission doesn't want to preclude and in light of those, and I happen to agree with that. I believe that my other employment actually compliments my service on the Council, and I don't think we should limit as long





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1 you're doing your job, you're ability to make ends meet. But that raises the question for  
2 me, you know, if we're going to put something on the ballot and have a debate about  
3 something that has no practical impact, "membership on the Council should be  
4 considered a full-time position for the purpose of determining compensation." If I  
5 understand what you're saying Mr. Faden, as a practical matter, this has no impact.

6  
7 Mike Faden,

8 I don't know if I would agree with that, I think the Charter Review Commission saw it...

9  
10 Councilmember Perez,

11 Okay.

12  
13 Mike Faden,

14 It doesn't have any direct legal effect but it's, they saw it as giving the voters an  
15 opportunity to give policy direction to both the next Council and whatever Compensation  
16 Commission advises it on how to set compensation.

17  
18 Councilmember Perez,

19 Do you need that sentence, though, in order to accomplish that goal that you've...

20  
21 Mike Faden,

22 If there were another, I'm not sure what the alternate way is giving that kind of policy  
23 directions would be.

24  
25 Councilmember Perez,

26 I mean do you...I guess an alternate way would be you don't amend the, you don't  
27 amend the charter at all, but you simply, the next Compensation Commission reflects  
28 the reality that this job is a full-time job, and they recommend the salary commensurate  
29 with that. I am just throwing out ideas. I don't, I'm struggling with why this, what this  
30 sentence what, problem is this sentence, the solution to. I mean whenever we're talking  
31 about charter amendments, we had this debate a year ago and there were proposed  
32 technical fixes, and I forgot what they were, but I just remember they didn't rise to the  
33 level of having to bring them to the voters and, meaning no disrespect to the  
34 Commission. I'm wondering here when we're talking about something that as a legal  
35 matter, and maybe I should have used it as a legal matter instead of practical matter.  
36 When you're talking about something that as a legal matter doesn't have, doesn't  
37 change the status quo, again, I'm struggling with the, what is the clarity that this is  
38 providing? And if Mr. Andrews, if you want to take a stab, I'm open to this.

39  
40 Council President Leventhal,

41 Actually, I would like to call on Ms. Praisner first. She hasn't had a chance to speak and  
42 had her light on longer, and then I'll call on Mr. Andrews next.



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Councilmember Praisner,

Thank you. I think we need to look at this as a piece, not just a Charter Review Commission but the Compensation Committee, that has had the similar conversations and in fact there is an interaction between the two. I, and I think there has been a gamut of conversation about both workloads for Councilmembers and how one considers Councilmembers. The issue is, remember this fall under the section that is titled compensation. It's a paragraph on compensation. It's all about money just as I think Ms. Floreen was saying, in this section of the charter and it says the Council prescribes by law the compensation, meaning the process that we have in place where a Council has the commission that makes recommendations and then projects and we take action for the next Council. We don't alter our own personal compensation. This section of the charter deals with compensation, and what it basically says in conjunction now with what the compensation commission commented on is that the, as you look at comparable salaries and as you deal with compensation, this position should be considered for compensation purposes, that's what the language that is being recommended, as a full-time position. Which gives guidance and is a question that obviously in this section, the voters have a right to say yes or no, we don't want it to be considered a full-time position for compensation purposes. The only point I would make is that it doesn't change the amount of time someone might put into the job or not put in. Mr. Subin is absolutely correct when it comes to conflicts of interest with outside employment or outside employment issues, the Ethics Commission certainly has that role and responsibility, and I think the other comment about the voters, voters make decisions about whether they think a Councilmember is fulfilling their responsibility, opinions they agree with, putting enough time into it. Whatever they may choose. It's an alphabet soup of rationale and folks pick what it is. This is again, the section that relates to compensation in the charter and it gives direction by the voters to the kind of consideration, the Commission and to that effect the Council should use in setting compensation. It is about compensation.

Council President Leventhal,  
Mr. Andrews.

Councilmember Andrews,

Thank you, Mr. President. I'm looking at page 6 of the report of the Charter Review Commission and in their background section of this, I think they address some of the issues that were raised. It reads the question whether the charter should include the language treating service on the Council as a full-time or part-time position was originally referred to this Commission in 2002 by the Committee to study the compensation of the County Executive, County Council, Sheriff and State's Attorney. Article 1 of the charter contains provisions relating to the structure and composition of the Council. The charter is silent on the issue of whether the membership on the



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1 Council is a full or part-time position and there's no guidance on compensation. Now,  
2 the charter is not silent on the definition of the County Executive in terms of that being  
3 the sole paid work that the County Executive has during the term in office, and so what I  
4 have heard the Charter Commission refer to is the concern or the fact, the implication  
5 because the charter addresses the Executive but does not address the Council  
6 implication, it's that people then come away with the assumption that the Council is part-  
7 time position because it's not specifically addressed where the County Executive is  
8 addressed as a full-time-only position. So what they're recommending is really  
9 something in between. Which is that for the purposes of compensation, that the position  
10 be treated as a full-time, and I think they talking about as a commonly understood full-  
11 time position, which commonly understood is 40 hours or more, and part-time is  
12 commonly understood as less than that when you ask people. But they specifically are  
13 not recommending a change in the ability of the Councilmembers, the future  
14 Councilmembers to hold another position subject to the Ethic's Commission's  
15 requirements. I think what it does practically is, the practical effect is it gives people the  
16 choice of having this as their only position in terms of what is compensation would be  
17 evaluated to be by the voters, by the Committees that recommend compensation, by  
18 the Council. In fact, it increases options it doesn't decrease them.

19  
20 Council President Leventhal,

21 Well, I see no other lights, and I'll just add my two cents here. I know that the Charter  
22 Review Commission had thorough and thoughtful discussion on this matter, because I  
23 heard some of the discussion, and they solicited our views and we provided our views  
24 and our own experiences. Speaking only for myself, I have found that the requirements  
25 of doing this job well vastly exceed what I expected they would be when I entered into it.  
26 I was under the impression that they had Wednesdays and Fridays, quote, off, that it  
27 would be possible to have outside employment, and even relatively easy to have  
28 outside employment. We don't have Wednesday or Fridays off during the months of  
29 April or May, and we often have to work either Saturday or Sunday, or both because of  
30 community requirements that are attendant with the position, and that if you fail to meet  
31 them, you won't be re-elected, because people don't see you in the community. So  
32 although it has occurred that I occasionally am not required to be in Rockville and I'm  
33 not required to be doing Council business on a Wednesday or a Friday, I almost always  
34 have to work Saturday or Sunday and frequently both Saturday and Sunday. And so  
35 speaking only for myself, I have not found it functional to have outside employment in  
36 this position. It might be in the future that I can organize my affairs in such a way to be  
37 able to do that. I'm not complaining, I love the job, it's a privilege to serve but I do know  
38 that the Charter Review Commission had this conversation, and came to the conclusion  
39 that because all Councilmembers unanimously work more than 40 hours per week, that  
40 it was reasonable to define it as a full-time position. Should the voters, should this  
41 Council vote to place it this on the ballot, and I understand since some of my colleagues  
42 have said they will not vote for that, perhaps the Council won't do that. But should the



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1 Council place it on the ballot, the voters then will give us guidance as to whether in the  
2 voter's minds this should be a full-time position. We're larger than 5 states, we're  
3 substantially larger than the District of Columbia which I believe, defines its  
4 Councilmembers as full-time. We are the largest jurisdiction in Maryland, most of us  
5 chair committees over and above our responsibilities to our constituents and to our  
6 personal offices, and so I do think it's simply a statement of fact that this is indeed a full-  
7 time job. And so the Compensation Committee, should the voters add this language to  
8 the charter, the Compensation Committee will take that into account. Should the voters  
9 not, should the voter vote not to add this to the charter, which would be their right, then  
10 that would be useful information, I think, for Councilmembers to have that our own  
11 expectations of what is reasonable, what is practical, how to divide our time between  
12 the office and family, and constituent responsibilities, how many events we should  
13 attend, how many days we should spend in Rockville. I would find that guidance from  
14 the voters quite useful. I'd like to have the voters views on that, and I would certainly,  
15 should the voters decide to send me back here, which we'll find out in a few weeks, I'd  
16 be very grateful to have the voters views on how I should structure my time and how I  
17 should prioritize my activities, and how I should earn my income. So, speaking as a  
18 participant in this process, I'd be very grateful to have the voters' views on this matter.  
19 Mr. Subin.

20  
21 Councilmember Subin,

22 I can't argue with what the Council President has just stated, but the more I am hearing  
23 here, the more the issue really seems to be the issue of compensation and opening up  
24 the door to that, and several of the Compensation Commissions have discussed that  
25 since 1990. They brought it up first in 1990, and the Council had the opportunity on  
26 many occasions to, without messing with the fundamental spirit of this County, which is  
27 in the charter dealing with that. I do not believe, have never believed that the charter  
28 should be a mechanism for making what amounts to a political statement, unless it's  
29 meant to change the fundamental character of government or how it is dealt with. This  
30 amendment really does not do that. This amendment simply makes a statement, and  
31 goes no farther than simply making a statement. That statement being the Council is  
32 something that takes a minimum of 40 hours a week to do. A minimum, that's in the off  
33 season, forget the budget season. I think you taking the fundamental document of  
34 governance of this County and using it to make a statement which can be made in other  
35 places, has been made at other times and in fact past Councils have rejected that  
36 notion. Now whether it is because that issue keeps coming up in an election year and  
37 nobody wants to say, or an institution doesn't want to say we doubled the salary or  
38 increased it by 50% or whatever it was. I don't know, but think this is a Trojan horse that  
39 does just that. It has not been said by the direct means, the institution has not desired to  
40 say by the direct means, and so now it desires to say it by indirect mean, and I just think  
41 that the fundamental document of government is not there to make those kinds of  
42 statements.



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1  
2 Council President Leventhal,  
3 Mr. Perez.

4  
5 Councilmember Perez,

6 I confess I still don't know what I'm going to do here. I'm struggling with the doctrine of  
7 unintended consequences. I don't have a dog in this fight. I'm not running for reelection,  
8 and so, but I am concerned that a person who, assuming this passed, and then a  
9 person runs for the Council and they do have outside employment, for whatever reason  
10 that someone is going to make a campaign issue of well, wait a minute, we just passed  
11 an amendment to our constitution saying it has to be a full-time position. And then  
12 you're forced into, well, but the Charter Commission explicitly said that you could still  
13 have outside employment, but you're left having to define and explain yourself, and I  
14 think as a practical matter, one consequence might be that some people that we would  
15 want to have serve on the Council may look at this and say as a practical matter I really  
16 would be ill-advised to engage in outside employment, because somebody is going to  
17 make that an issue in a campaign, because now we have explicitly said it's going to be  
18 a full-time position. And I understand that then you read the charter report and you have  
19 to point out, well no, that's not what the charter commission said, but I do think as a  
20 practical matter, I am concerned about the doctrine or the consequence, unintended  
21 though it might be, of this language in terms of the pool of potential people seeking to  
22 run for this job. And I say this as someone who, you know, lame ducks do fly sometimes  
23 but, you know, I point that out as a source of concern and I don't want people, I don't  
24 think, I want people of all ilks, people who are going to do this full-time and not have  
25 outside employment. People who want to have outside employment and will do this full  
26 time. I don't want them to be at a disadvantage and I am concerned that this might have  
27 that affect.

28  
29 Council President Leventhal,

30 Well, again, I see no other lights on. I will respond to the comments of my friends and  
31 colleagues. First of all, to my friend Mr. Subin, the suggestion that this somehow hides  
32 its relationship to compensation, I think, is misplaced in so far as it simply states that it's  
33 to be used for the purpose of determining compensation. So, the plain language of the  
34 proposed charter amendment makes that clear. I don't think it's in any way a Trojan  
35 horse, I think it's absolutely the case that this would be guidance for the purpose of  
36 determining compensation, and as for whether we should be more explicit than that, you  
37 know the charter is a document that is changed infrequently. I think it's overstating the  
38 case to say it is the constitution, because our charter historically has been amended  
39 much more frequently than the U.S. Constitution has and we have, it has been more  
40 organic and more flexible than the U.S. Constitution has. But, but, having said that, our  
41 salaries now are indexed each year, and I don't think it would be better to give explicit  
42 instruction in the charter as to precisely what our salary ought to be, because that





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1 number will quickly become dated. I think that as general language, which most  
2 language in the charter is, this generally gives guidance to the compensation  
3 commission and that is not a Trojan horse and there is no confusion about it. That's  
4 precisely what it does. It doesn't hide that, there's no subterfuge. It clearly states that it  
5 is for the purpose of determining compensation. And to Mr. Perez because I heard  
6 some of the dialogue in the Charter Review Commission, I know that the Charter  
7 Review Commission's concern was the mirror image of the concern that you articulate.  
8 That the Charter Review Commission's concern is that by having a salary that it on the  
9 low end in terms of professional occupations in Montgomery County for work that is  
10 overwhelmingly demanding and far more demanding than 40 hours a week. It was the  
11 Charter Review Commission's judgment that our failure to clarify whether or not this is a  
12 full-time position was in fact dissuading people from running for the Council. And you're  
13 now stating that if we somehow suggest, which this language does not do, so you're  
14 forecasting forward as to what issue might get raised in a political campaign, and I  
15 heard what you said, and I do understand what your saying, but your suggestion that  
16 this language might itself dissuade people with outside employment from seeking office  
17 to the Council is the mirror image of what the Charter Review Commission said, which  
18 is that people that need to be compensated for their work will not run for the Council,  
19 and that only independently wealthy people, or people with an ample outside source of  
20 income would run for the Council because increasingly as the cost of living goes up, the  
21 compensation available for full-time work on the council is not in keeping with, you  
22 know, professional occupations and training, and the sorts of skills, management, and  
23 educational [INAUDIBLE], and the kinds of things that would enable one to succeed on  
24 the County Council. And so with that, I guess that concludes the discussion now, and  
25 I'm not entirely sure why we scheduled this for a vote on July 25th. Why are we talking  
26 about this now, and voting two weeks from now. What's the reason for that? I suppose I  
27 should know, I guess I scheduled it, but what...

28  
29 [LAUGHTER]

30  
31 Mike Faden,  
32 That's been the practice.

33  
34 Council President Leventhal,  
35 That's been the practice in the past. That's what we've generally done, discussion now,  
36 vote in two weeks. Okay, well it may well be that...

37  
38 Councilmember Praisner,  
39 [INAUDIBLE]

40  
41 [LAUGHTER]



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1 Mike Faden,  
2 You certainly could take a straw vote today if you wished to.

3  
4 Council President Leventhal,  
5 No, I guess not, I mean I think it might be useful now we put the issues out there to the  
6 extent that any members of the public wish to comment now. If anyone is watching us  
7 on television, or if there is some media coverage of this matter, you know, perhaps we'll  
8 get some views from our constituents between now and July 25th. So we now turn to  
9 the issue of the timing of legislation. I think we can get through this very rapidly, I hope  
10 so.

11  
12 Mike Faden,  
13 This is essentially a technical amendment recommended to the Charter Review  
14 Commission by both the County Attorney's office and ourselves to clarify some  
15 ambiguities in section 208 of the charter on the timing of submission of Bills to the  
16 Executive and action by the Executive. We still continue to recommend it.

17  
18 Council President Leventhal,  
19 Okay, are there any comments on the proposal of the Charter Review Commission  
20 regarding when a veto must be effective? Okay hearing none those are the only two  
21 proposals...Mr. Andrews has a comment.

22  
23 Councilmember Andrews,  
24 Thank you Mr. President. I would ask that the Council ask that a representative of the  
25 Charter Review Commission be with us on the 25th.

26  
27 Council President Leventhal,  
28 Yeah, very good suggestion Mr. Andrews. Okay, so...

29  
30 Mike Faden,  
31 You do have the third amendment, which is not a Charter Review Commission  
32 amendment in the packet.

33  
34 Council President Leventhal,  
35 Yeah, we need to get our minds around that too, so if we could just have that described  
36 to us.

37  
38 Mike Faden,  
39 Yes, what we have done here, and we have not gotten from Mr. Ficker an actual copy of  
40 what he is now circulating, he is scheduled to testify on something else this afternoon, I  
41 will try to ask him for a copy. What we've done taken the previous amendment, which  
42 we think is the same as what he's now circulating, and of course, the Council has no





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1 role in the language of the amendment, but you do decide on the ballot language, and  
2 so what we've done is put on page five of this packet, draft ballot language for this  
3 amendment, if it is indeed what is being circulated, and it is pretty straight forward.

4  
5 Council President Leventhal,

6 Okay, a critical question here, if we could explain, I see that the memo states that  
7 Council staff recommends that this resolution conditionally approve the ballot language.  
8 If we vote on July 25th for something conditional, can we indeed do that can we vote for  
9 something pending the actual language, and does have the effect of putting whatever  
10 Mr. Ficker submits on the ballot, and there's no requirement that we actually vote when  
11 see the actual language?

12  
13 Mike Faden,

14 That is correct. You've done that in the past. What we neglected to do on page five, the  
15 lead in, the italicized sentence it says, "The ballot for this question must be designated  
16 and reads as follows." That should be different because we have another sentence, a  
17 different sentence for conditional approval. The reason for doing it this way is,  
18 essentially to spare you from coming back in August, we have done this more than once  
19 in the past. Where petitions have been circulated, we have the actual ballot language,  
20 and the resolution to approve the ballot language, the Council has conditionally  
21 approved, subject to the ballot qualifying, to the amendment qualifying for the ballot, the  
22 specific language.

23  
24 Council President Leventhal,

25 Okay, I see no questions or comments on that matter, so that concludes our work  
26 session on the ballot questions, and we will vote on July 25th. We now have before the  
27 Council, we now move in to District Council session, and the first item is Zoning Text  
28 Amendment 06-08, relating to Accessory Buildings in One Family Residential Zones.  
29 Chairman Silverman.

30  
31 Councilmember Silverman,

32 Thank you Mr. President. It's my understanding that there may be some changes to this,  
33 and I'm going to suggest we lay this over until this afternoon, and if it doesn't work out,  
34 we could lay it over for a week.

35  
36 Council President Leventhal,

37 Okay, is there objection to, shall we just schedule it for a week from today?

38  
39 Councilmember Praisner,

40 No, this afternoon, I'd like to if we can, let's see if we can.

41  
42 Councilmember Silverman,



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1 There may be a complicated proposed amendment, some interested parties are going  
2 to caucus over lunch, and if that gets resolved then so be it. If it doesn't get resolved,  
3 than I am going to suggest that we put it off for a week, so there's an opportunity for  
4 folks to be able to weigh in.

5  
6 Council President Leventhal,  
7 If any Councilmember does not find that acceptable, let them speak now, and then  
8 without objection we will return to ZTA 06-08 this afternoon immediately after the public  
9 hearing. Mr. Perez.

10  
11 Councilmember Perez,  
12 I'm sorry, I apologize, on matter number three I forgot to, that was the transmission  
13 facility coordination that we voted on earlier. I just wanted to make sure that I was  
14 recorded in the, I wanted to transmit my position, exactly, thank you, in the affirmative.  
15 Okay, next before the District Council is Zoning Text Amendment 06-10, Subordinate  
16 Structure Revisions. Chairman Silverman. Thank you, PHED Committee unanimously  
17 recommends this with the following revisions.

18  
19 Councilmember Silverman,  
20 Number one: Applying the proposed, well I should go back and say the purpose of this  
21 Zoning Text Amendment is to address an issue that has arisen as a result of the  
22 Department of Permitting Services determining that the word subordinate relates to a  
23 use rather than the size of an accessory building, and so that's why the ZTA was  
24 introduced. So, with that as background this will apply the proposed accessory building  
25 footprint limitation only on lots where the main building is a one family detached  
26 residential dwelling, to avoid unintended consequences in the nonresidential zones.  
27 There is not going to be a need to apply this limitation where there is a site plan or  
28 special exception review, because those are extensive review procedures, and they can  
29 be addressed there. The second amendment is to limit the footprint to not more than  
30 50% of footprint of the main building, to make sure we've taken out as much ambiguity  
31 as possible. Particularly where the size of the accessory building could be measured  
32 only in terms of the area of the footprint, without reference of number of square feet in  
33 the main building. Third recommendation and revision is to eliminate the proposal to  
34 allow the Board of Appeals to grant an increase in the floor area of an accessory  
35 building, we want to basically put a hard cap, and not let the Board of Appeals increase  
36 that, and we want to clarify in the grandfather provision that in the event a building  
37 permit is issued before the effective date, and I would like to make the effective date  
38 today, that the accessory building must be in compliance with the standards at the  
39 effective, at the time of the subsequent approval. Those are the suggested changes.

40  
41 Council President Leventhal,  
42 Ms. Praisner.



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Councilmember Praisner,

I just want to make a couple of points. I want to thank my colleagues on the Committee for working through this, especially Mr. Silverman, who had some of the issues brought to his attention as well. As he said when there's, when you're clarifying, when you're interpreting subordinate by what goes on inside the building when you're talking about a building, it's kind of hard to win that case from a standpoint of residential, in the residential zones. So, I think that's important. I want to make sure we're clear on the grandfathering issue that it relates to buildings for which a legal permit was granted, and for which they met the requirements at that time. So if something occurred where a permit had been granted prior to today, and it was determined either by further action, or the Board of Appeals, that it's not a legal building, then that wouldn't grandfather that structure. Is that correct?

Unidentified Speaker,

Yes, it is.

Councilmember Praisner,

Thank you.

Council President Leventhal,

Okay, hearing no further discussion then on Zoning Text Amendment 06-10, the clerk will call the role.

Council Clerk,

Mr. Denis?

Councilmember Denis,

Yes.

Council Clerk,

Ms. Floreen?

Councilmember Floreen,

Yes.

Council Clerk,

Mr. Subin?

Councilmember Subin,

Yes.



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1 Council Clerk,  
2 Mr. Silverman?

3  
4 Councilmember Silverman,  
5 Yes.

6  
7 Council Clerk,  
8 Mr. Knapp?

9  
10 Councilmember Knapp,  
11 Yes.

12  
13 Council Clerk,  
14 Mr. Andrews?

15  
16 Councilmember Andrews,  
17 Yes.

18  
19 Council Clerk,  
20 Mr. Perez?

21  
22 Councilmember Perez,  
23 Yes.

24  
25 Council Clerk,  
26 Ms. Praisner?

27  
28 Councilmember Praisner,  
29 Yes.

30  
31 Council Clerk,  
32 Mr. Leventhal?

33  
34 Council President Leventhal,  
35 Yes, the Zoning Text Amendment passes unanimously nine to zero. We next have  
36 before us Zoning Text Amendment 06-12, Moderately Priced Dwelling Units, Corner  
37 lots. Chairman Silverman.

38  
39 Councilmember Silverman,  
40 Thank you Mr. President. The Committee recommends unanimously approval of ZTA  
41 06-12. The policy that we're trying to outline and support is the zoning standards for lots  
42 in a subdivision which provide MPDUs shouldn't be more restrictive than for lots in a



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1 subdivision that doesn't provide MPDUs. The background is contained here in our  
2 packet, where there are set back standards for corner lots that are currently an  
3 exception of the policy of allowing greater flexibility where you have MPDUs, and this is  
4 to address this discrepancy testimony that took place at the public hearing was in  
5 support of the ZTA. Planning Board likes it, Planning Board staff likes it, everybody likes  
6 it.

7  
8 Council President Leventhal,  
9 There are no additional comments, the clerk will call the roll.

10  
11 Councilmember Silverman,  
12 We'll find out later.

13  
14 Council Clerk,  
15 Mr. Denis?

16  
17 Councilmember Denis,  
18 Yes.

19  
20 Council Clerk,  
21 Ms. Floreen?

22  
23 Councilmember Floreen,  
24 Yes.

25  
26 Council Clerk,  
27 Mr. Subin?

28  
29 Councilmember Subin,  
30 Yes.

31  
32 Council Clerk,  
33 Mr. Silverman?

34  
35 Councilmember Silverman,  
36 Yes.

37  
38 Council Clerk,  
39 Mr. Knapp?

40  
41 Councilmember Knapp,  
42 Yes.



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1  
2 Council Clerk,  
3 Mr. Andrews?

4  
5 Councilmember Andrews,  
6 Yes.

7  
8 Mr. Perez?

9  
10 Councilmember Perez,  
11 Yes.

12  
13 Council Clerk,  
14 Ms. Praisner?

15  
16 Councilmember Praisner,  
17 Yes.

18  
19 Council Clerk,  
20 Mr. Leventhal?

21  
22 Council President Leventhal,  
23 Yes, the ZTA passes unanimously. Next before the Council is Zoning Text Amendment  
24 06-07 Farm Building Supplies and Construction in a C-1 zone.

25  
26 Councilmember Silverman,  
27 Thank you Mr. President. Committee approved unanimously ZTA 06-07 introduced by  
28 the Councilmember from the north-forty.

29  
30 [LAUGHING]

31  
32 Councilmember Silverman,  
33 Isn't that what they call it, the north-forty? Right. As introduced the ZTA would permit a  
34 Farm Building Supply and construction use on property zoned C-1, provided the use  
35 has been in continuous operation since 1980. The Committee reviewed it and said not  
36 broad enough! And so, as amended by the Committee, a Farm Building Supply and  
37 Construction use would be permitted by right on C-1 zoned property located in the  
38 Agricultural Reserve, as delineated in the 1980 Agricultural Preservation Master Plan.  
39 Because we believe this use should be available at convenient sites to serve the entire  
40 agricultural community. And that's it.

41  
42 Council President Leventhal,



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1 And that's it, and Mr. Knapp.

2  
3 Councilmember Knapp,

4 I just want to thank my colleagues for their deliberation, they did a great job of  
5 broadening the scope, and addresses a specific issue while, I think, making it more  
6 accessible for better service in the entire Ag. Reserve. So I thank you very much.

7  
8 Council President Leventhal,

9 Very good. We congratulate Mr. Knapp on his advocacy for the agricultural community.  
10 He has been a strong advocate for that community. So, the Clerk will call the roll on  
11 ZTA 06-07.

12  
13 Council Clerk,

14 Mr. Denis?

15  
16 Councilmember Denis,

17 Yes.

18  
19 Council Clerk,

20 Ms. Floreen?

21  
22 Councilmember Floreen,

23 Yes.

24  
25 Council Clerk,

26 Mr. Subin?

27  
28 Councilmember Subin,

29 Yes.

30  
31 Council Clerk,

32 Mr. Silverman?

33  
34 Councilmember Silverman,

35 Yes

36 Council Clerk,

37 Mr. Knapp?

38  
39 Councilmember Knapp,

40 Yes.

41  
42 Council Clerk,





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1 Mr. Andrews?

2  
3 Councilmember Andrews,  
4 Yes.

5  
6 Council Clerk,  
7 Mr. Perez?

8  
9 Councilmember Perez,  
10 Yes.

11  
12 Council Clerk,  
13 Ms. Praisner?

14  
15 Councilmember Praisner,  
16 Yes.

17  
18 Council Clerk,  
19 Mr. Leventhal?

20  
21 Council President Leventhal,  
22 Yes, the zoning amendment is passed unanimously by the Council. We have an  
23 addendum before we recess. We have...what are we doing Ms. Lauer? We have two  
24 items for introduction. There's no need, I don't think we need to explain them. We are  
25 introducing...

26  
27 [LAUGHTER]

28  
29 Council President Leventhal,  
30 They're just for introduction.

31  
32 Councilmember Silverman,  
33 I thought I would explained it to our colleagues, not to the public.

34  
35 Council President Leventhal,  
36 Now the public's curious, okay. Mr. Silverman would you like to explain items O and P  
37 that are now being added for introduction..

38  
39 Councilmember Silverman,  
40 No, the reason why this is being introduced is Park and Planning was being notified  
41 there's a record amount of program open space monies that came in. Last year we got  
42 \$8 million. This year it was \$24 million. So, we have already introduced, and the PHED



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1 Committees already had a work session on what Park and Planning wants to do with  
2 those monies. We're going to be back on the 24th of July to talk about it in Committee,  
3 and then full Council on the first. But, in order to provide maximum flexibility to the  
4 Council, to be able to make choices about what it wants to support in terms of allocation  
5 of those monies, particularly as it relates to legacy open space, these have to be  
6 introduced today, because they're amendments to our CIP. That's all it is.

7  
8 Council President Leventhal,

9 Okay, hearing no objection, item O a special appropriation for 1.8 million for legacy  
10 open space is introduced, a public hearing is scheduled for August 1st, and hearing no  
11 objection an amendment to capital parking planning commission's CIP for legacy open  
12 spaced is introduced and public hearing is scheduled for August 1st. The Council  
13 stands in recess until the hour of 1:30.  
14

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1 Multiple Speakers,  
2 [INAUDIBLE]

3  
4 [MUSIC]

5  
6 Councilmember Praisner,  
7 Good afternoon, ladies and gentlemen. This is a public hearing on Zoning Text  
8 Amendment 06-17, Accessibility Improvement Exemption, which would amend the  
9 zoning ordinance to define accessibility improvements, exempt minimum accessibility  
10 improvements from setback and lock coverage limits and generally amend exemptions  
11 from Standards for Accessibility Improvement. Persons wishing to admit additional  
12 material for the Council's consideration should do so before the close of business on  
13 July 12th. The PHED Committee work session is tentatively scheduled for July 17th at  
14 8:30 a.m. 8:30 a.m.? Whoa!

15  
16 [LAUGHTER]

17  
18 Councilmember Praisner.  
19 Please call 240-777-7900. I know where I'll be. Before beginning your presentation,  
20 please state your name and address clearly for the record and spell any unusual  
21 names. We have six speakers. Jay Kenney for the County Executive, Gregg Russ for  
22 the Planning Board, Bruce Dunton for the Commission on Aging, Russ Holt for the  
23 Commission on People with Disabilities, Nancy Soreng for the League of Women  
24 Voters, and Robert Masters speaking on his own behalf. Let me also indicate that the  
25 Zoning Text Amendment came over from the County Executive and I have asked to be  
26 listed as a sponsor. Everyone can join us at the table at this point, please. Jay, you're  
27 first.

28  
29 Jay Kenney,  
30 Good afternoon, Ms. Praisner, Committee members. Thank you for this opportunity to  
31 be here, to testify on behalf of this important amendment. My name is John Kenney,  
32 Chief of Aging and Disability Services in the Montgomery County Department Health  
33 and Human Services. I'm here today to testify on behalf of County Executive Doug



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1 Duncan in strong support of this amendment. First I want to thank the County Council  
2 for introducing this Zoning Text Amendment, ZTA 06-17 at the request of the County  
3 Executive, and also want to express our thanks to the Planning Board, which voted  
4 unanimously to support this amendment last Thursday. Relief from zoning standards for  
5 accessibility improvements was initiated and recommended by the County's  
6 Commission on People with Disabilities. I want to thank the Commission on People with  
7 Disabilities which has been working on promoting greater housing accessibility over the  
8 last several years, and in particular to Cindy [Buddington] who brought housing  
9 accessibility to my attention while she served as Chair of this group. I'd also like to thank  
10 the Commission on aging for their support and they're, of course, here to testify on  
11 behalf of this Bill today. Thank you for this opportunity to make Montgomery County  
12 more accessible to people with disabilities and also to seniors. This is an important step  
13 in the direction of promoting greater access in our County's housing stock. Thank you.

14  
15 Council President Leventhal,  
16 Thank you, Mr. Russ?

17  
18 Gregg Russ,  
19 Thank you, Mr. President. Excuse me, for the record, Greg Russ of the Montgomery  
20 County Planning Board. The Montgomery County Planning Board reviews Zoning  
21 Ordinance Text Amendment number 06-17 at its regular meeting on July 6th, 2006. The  
22 Board recommends that the proposed text amendment be approved as submitted and  
23 included in the technical staff report. The proposed Zoning Text Amendment would  
24 establish a definition for accessibility improvements for one-family dwellings. The text  
25 amendment further exempts improvements from set back or lot coverage limitations. If  
26 the improvements do not exceed minimum design specifications in the Maryland  
27 Accessibility Code, and Montgomery County Building Code. The text amendment would  
28 add zoning flexibility and eliminate the need for property owners to obtain a variance in  
29 order to add unroofed and open structures, including ramps and chair lifts for persons  
30 with physical disabilities, to access one family dwelling. The Board further agrees with  
31 the intent of the text amendment and believes that the language that prohibits the  
32 accessibility improvement from exceeding the minimum design specifications of the  
33 Maryland accessibility code, and that the County building code provides additional  
34 protection from unnecessarily establishing oversized structures in the front yard. As  
35 such, the character of the residential area is maintained. Thank you.

36  
37 Council President Leventhal,  
38 Thank you, Mr. Dunton?

39  
40 Bruce Dunton,  
41 Good afternoon. My name is Bruce Dunton. I'm a member of the Commission on Aging.



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1 Councilmember Praisner,  
2 Mr. Dunton, you need to push the button for your mic.

3  
4 Bruce Dunton,  
5 Normally don't need to do that, but we'll do it.

6  
7 Councilmember Praisner,  
8 It's for the recording.

9  
10 Bruce Dunton,  
11 The Commission is unanimous in its support of this Zoning Text Amendment which will  
12 greatly assist the senior who needs to make external modifications to a home in order to  
13 be able to continue living in that home. This amendment removes the costly and time-  
14 consuming special appeals process for the construction of an open unroofed structure,  
15 such as a ramp or chair lift, which will allow a person with a physical disability to have  
16 access to a single family dwelling. The March, 2005, 55-plus housing preference survey  
17 conducted by Park and Planning found that the majority of the County residents age 55  
18 and older plan to remain in their current residence for the rest of their lives. For  
19 residents who wish to age in place, home modifications are inevitable. Over two-thirds  
20 of the older residents reside in single family detached homes with a median age of 35  
21 years. Homes built in the '70s and earlier are not constructed with accessibility in mind.  
22 The Zoning Text Amendment facilitates the capacity of older County residents to age in  
23 place by using the setback or lot coverage limitations on the construction of external  
24 modifications needed for accessibility, and removing the financial and time-consuming  
25 burden of obtaining permission from the Board of Appeals prior to construction. Thank  
26 you for this opportunity to express the views of the Commission on Aging on this matter.  
27 This Zoning Text Amendment is an important step in the direction of creating an  
28 environment for successful aging in Montgomery County. And last, but not least,  
29 somewhere along the line, you need to consider what you're going to do with this  
30 building, because on a day like this with no elevators, I can't imagine if I was in a  
31 wheelchair how I would get up here. Thank you.

32  
33 Council President Leventhal,  
34 Okay. Thanks Mr. Dunton. I just took the elevator up. Is it in disrepair?

35  
36 Councilmember Praisner,  
37 Oh, from the garage.

38  
39 Council President Leventhal,  
40 The elevator from the garage. Okay. Mr. Holt?

41  
42 Russ Holt,



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1 Press that thing there. Good afternoon. My name is Russ Holt, and I'm Vice-Chair of the  
2 Montgomery County Commission on People with Disabilities. The Commission is  
3 unanimous in its support of the Zoning Text Amendment that will benefit our County's  
4 residents and visitors who have mobility impairments. This amendment would permit  
5 people to modify access to their home by right, rather than requiring them to submit the  
6 financially emotional burdens of permits and zoning variances through the Board of  
7 Appeals. We allow people to modify their homes more quickly in response to an  
8 accident or health condition. These accidents that can leave people with disabilities can  
9 happen overnight. Anyone in the room could have a disability tomorrow. We need to  
10 make it quick to make homes accessible. The Commission believes this amendment  
11 addresses three issues that are critically important to our County in this residence. First,  
12 if people with mobility impairments can not come and go from their own homes, and  
13 access the homes of their families, friends, and neighbors, they cannot participate in the  
14 life of the community. Birthday celebrations, civic, cultural, social events, we encourage  
15 everyone renovating their home to consider making at least one accessible entrance,  
16 either at the front, back, deck or garage. Therefore, the Commission believes this  
17 amendment is a public policy issue. Second, we are a community with an increasing  
18 number of seniors and studies have shown that most prefer to live in their own homes to  
19 the extent that is possible. However, many seniors with mobility impairments are literally  
20 prisoners in their own homes. As they are unable to come and go as they may need or  
21 desire. Further, in the event of an emergency, their lives are at risk, as well as the lives  
22 of the rescue personnel who cannot expediently remove them from danger because of  
23 the structural limitation of their homes. Therefore, the Commission believes this  
24 amendment is a public safety issue. If people can eliminate the architectural barriers  
25 that prevent them from coming and going to and from their own homes, whether out of  
26 necessity or convenience, that we are eliminating or delaying the need for premature  
27 institutionalization or the cost of assisted living expenses which often comes at the  
28 public's expense. It is also much less costly to modify a home rather than to sell a home  
29 and move based on accessibility needs. Therefore, the Commission also believes that  
30 this amendment is an economic issue. This amendment does not relieve homeowners  
31 from securing the "securance" of their homeowner's association, it's important for  
32 people to understand that. However, it is the hope of the Commission that the Council  
33 following upon its [INAUDIBLE] history would make it clear that the County does not  
34 condone or tolerate unnecessary or arbitrary determination or regulation, which impede  
35 residents' requests to make one's home accessible. We hope the Council will quickly  
36 adopt this amendment. It promotes the intent of greater fair housing and equal access.  
37 It provides a wonderful opportunity to expand the openness of our community, actively  
38 support fair housing principals and extend the people with mobility impairments,  
39 opportunities to become more active and vibrant participants in the life of our County.  
40 This amendment would make our County a leader in the state to have such legislation.  
41 Other Counties are actively seeking ways to promote greater accessibility in single  
42 family homes, as well.



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1  
2 Council President Leventhal,  
3 Okay, we have you're written testimony. We thank you very much for being here.

4  
5 Russ Holt,  
6 Thank you very much.

7  
8 Council President Leventhal,  
9 Thank you. Okay, Nancy Soreng is not here, nor Mr. Nester, so...

10  
11 Melpi Jefferies,  
12 I'm here.

13  
14 Council President Leventhal,  
15 Oh, please take your seat. Okay, Melpi, please press the button and proceed.

16  
17 Melpi Jefferies,  
18 Okay and I have...

19  
20 Council President Leventhal,  
21 You need to press the button if you're going to speak.

22  
23 Melpi Jefferies,  
24 Good evening -- afternoon. I'm Melpi Jefferies, for Nancy Soreng, President of the  
25 League of the Women Voters in Montgomery County, Maryland. Housing issues are the  
26 focus of league research study and discussion and consensus leading to positions since  
27 the early '60s. In 2005, the league of Montgomery County studied and reached  
28 consensus on a number of housing issues, including accessibility, housing for residents  
29 with special needs, and home accessibility. Accordingly, the League supports  
30 Montgomery County policies and programs to provide shelter and services to all  
31 individuals with special needs, including individuals with special needs due to mental  
32 illness, homelessness, physical disability, developmental disability, and age. Further, we  
33 support the production of barrier free or accessible housing as a voluntary effort on the  
34 part of the homebuilding industry, encouraged by a combination of incentives, such as  
35 an award program and some mandatory measures. ZTA 06-17 facilitates the  
36 accessibility of one-family dwellings by making it easier for seniors and people with  
37 disabilities to modify homes. While accessible features are more readily incorporated  
38 during the original construction of homes, the trend of aging in place often necessitates  
39 modifications. ZTA 06-17 eliminates the costly and time-consuming administrative  
40 barrier of the zoning appeals process, allowing those with disabilities to modify their  
41 homes when it becomes necessary. The amendment applies only to accessibility  
42 improvements that do not exceed the minimum design specifications in the Maryland





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1 accessibility code and the Montgomery County building code, decreasing the likelihood  
2 of any negative impact on adjacent properties. While this amendment will not result in  
3 the production of barrier-free or accessible housing, it is a small step in that direction  
4 and we encourage Montgomery County seniors and residents with disabilities to take  
5 advantage of the accessible homes for seniors program recently announced by the  
6 state of Maryland. The League of Women Voters urges the adoption of ZTA 06-17.  
7 Thank you for your attention.

8  
9 Council President Leventhal,  
10 Thank you for your testimony. Is Mr. Nester present? He is. Okay. How will we facilitate  
11 this? Perhaps, Mr. Holt if you could back up enough to let...

12  
13 Robert Nester,  
14 Could I just speak from here?

15  
16 Council President Leventhal,  
17 Well, the difficulty is the microphone. Can we get advice from staff on how to  
18 accommodate our speaker?

19  
20 Melpi Jefferies,  
21 Would it help if I moved over?

22  
23 Multiple Speakers,  
24 [INAUDIBLE]

25  
26 Council President Leventhal,  
27 There we are. That will work, Mr. Nester, please. Please proceed. You need to press  
28 the button there in front of the microphone. Thank you very much.

29  
30 Robert Nester,  
31 Good afternoon, ladies and gentlemen of the Council. My name is Robert Nester, I'm a  
32 new resident of the County and a homeowner. I also have a mobility impairment, use  
33 scooters and power wheelchairs to get around. After a long search, I finally found a  
34 home, a year's worth of searching, during which I rented a house before I bought. I  
35 finally found the house which could be made accessible with a reasonable amount of  
36 effort. I'm sure most everybody else would consider it an unreasonable amount of effort  
37 because old houses do not convert at all, reasonably. Among the modifications that I  
38 want to make is a ramp that allows me to go from the backyard to the front yard. It's a  
39 walkout basement, there's 10 feet of difference between the front and the back of the  
40 house and I'm concerned, I think it's a safety issue among others that have been  
41 discussed here. I come before you because I'm facing the very issue before going  
42 before the Zoning Board of Appeals, when the people built my house, they built it so



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1 close to one side that I can't, I'm on my neighbor's property in order to go around and so  
2 forth. So, I face this problem in the next weeks and I'm coming to testify in favor of it, of  
3 course, because it will make things a lot easier for me to get on with what I need to do,  
4 which is to make my house more accessible for me. I would like to say, however, with a  
5 couple of reservations about the language that is before you today. I think I understand  
6 this Committee is to take it up and work it over some more. I think it is irrational, unfair  
7 and unnecessary to prohibit my modifications as to their size and the other two  
8 restrictions that are in this language, unroofed and open structure. I believe that, that  
9 outside facilities like ramps are subject to, of course, rain and snow and the rest and  
10 they're unsafe that way. If I had a need to get from the back of the house to the front up  
11 a ramp, it needs to be dry, it needs to be nonslip, it needs to be level and so forth. Now,  
12 that is a very real issue. I don't want to build something that half the time is unsafe for  
13 me to travel. It needs a roof. The one I'm building or the one I propose to build will be  
14 along the side of the house, it will be integrated into the side of the house. It will be  
15 attractive and so forth. It will not be an eyesore and the setback that I will be  
16 encroaching on isn't going to affect the neighborhood much. If I were out front down to  
17 the street or something, that may be a different issue. But I don't think that the  
18 restrictions on roof and on an enclosing and certainly on minimum design specifications  
19 should be left in here. It should be up to the handicapped person to decide what best  
20 meets his needs or her needs and the only test that should be levied against building an  
21 accessible device is whether it is reasonable. This falls under the category of a  
22 reasonable modification. It's protected by the Fair Housing Act and there should be no  
23 restrictions at all such as are in here. Thank you.

24  
25 Council President Leventhal,

26 Thank you for your testimony, Mr. Nester. And there are no questions for this group. We  
27 appreciate your letting us know your views. Agenda item 12, Ms. Floreen does have a  
28 question.

29  
30 Councilmember Floreen,

31 I don't have a question, I just wanted to be added on to the Bill as a co-sponsor. Thank  
32 you Jeff.

33  
34 Council President Leventhal,

35 Thank you. Agenda item 12 is a public hearing on expedited Bill 27-06, taxicab  
36 amendments, which would temporarily modify the process by which an applicant for a  
37 taxicab driver identification card may receive a temporary identification card, temporarily  
38 suspend the application of certain provisions of law relating to the criminal background  
39 check necessary to issue a taxicab drivers identification card. Revise the schedule for  
40 issuing new taxicab passenger vehicle licenses and generally amend the law, regulating  
41 taxicabs and taxicab drivers. The transportation and environment committee is  
42 tentatively scheduled to take up this Bill on July 13th at 9:30 a.m. The record will be



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1 closed at the end of this hearing. We have four witnesses in group "A" and they are Art  
2 Holmes, Wilson Krahne, Retha Arens and Julia Lynch. If the witnesses would come  
3 forward and beginning with General Holmes, please press the button and introduce  
4 yourself for the record.

5  
6 Art Holmes,

7 President Leventhal and Members of the Council, I'm Arthur Holmes, Director of the  
8 Department of Public Works and Transportation. Thank you for this opportunity to share  
9 the department's comments on expedited Bill 27-06. We strongly oppose those changes  
10 proposed by this Bill that we can current taxicab requirements designed to protect the  
11 public safety. The public interest is not served by allowing taxicab drivers to transport  
12 passengers, even for one day, who have not passed the basic screening test on official  
13 criminal background checks. Bill 27-06 proposes to reinstate issuing temporary licenses  
14 to taxi driver applicants prior to receiving the results of the official criminal background  
15 check, because in the past, this could be a lengthy process. However, this concern  
16 should no longer be an issue. Thanks to a recent development. On June 25, the  
17 Pikesville Criminal Justice Information System office began using a new program that  
18 takes only a few days to electronically print, search the criminal database, and issue a  
19 report, and send the information and the electronic form to the FBI. Where turn-around  
20 time should be less than a week. With this newer, faster method, there is no reason to  
21 rely on abbreviated information from third party vendors, which may not be as accurate  
22 or reliable as the official report and may not even be available any faster. Therefore, I  
23 strongly urge the Council to keep the background check requirement unchanged or to  
24 postpone the Bill until we can evaluate the impact of the live scan fingerprinting on  
25 license issuance. Issuing driver IDs when applicants have not passed the test is the  
26 wrong approach. Because passing the test ensures the drivers meet some basic  
27 standards such as knowledge of Maryland driving law, following passengers' verbal  
28 directions to a destination, making changes with American currency and using a map.  
29 Without meeting these minimal requirements drivers cannot provide the type of service  
30 we believe Montgomery County residents deserve. Our previous experience with drivers  
31 operating under a temporary ID arrangement bears this out. There were more  
32 passenger complaints about drivers when we were issuing temporary license than they  
33 are today. 60% of those holding temporary IDs were transient drivers who never took  
34 the test or failed it. And 25% of these transients either failed to provide accurate  
35 information on their application or failed a criminal background check. The department  
36 is also concerned with the proposal to define a safe or careful driver as an applicant  
37 who has received no more than four points on their driving record. The definition fails to  
38 address other readily available information. You have copies of my comments. I thank  
39 you for allowing me to talk to this body about our concerns.

40  
41 Council President Leventhal,

42 Thank you Mr. Director. Mr. Krahne. Yep, you're fine.



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Wilson Krahne,

Good afternoon, Chairman Leventhal and members of the County Council. My name is Wilson Krahne and I'm here as the Chairperson of the Taxicab Services Advisory Committee to share our comments on Expedited Bill 27-06. Since TSAC's membership includes both public and industry members, we are in a unique position to represent many sides of this issue. TSAC supports section 53-205, which allows an initial issuance of 70 taxicab vehicle passenger vehicle licenses in calendar year 2006. Although the process will be well under way in 2006, we request that some protection be written into the code to allow for unexpected delays and for time for licenses to purchase and retrofit taxicabs. TSAC supports Section 53-306D, which allows the Director to extend the expiration date of IDs if the applicant has submitted all documents, and processing of the state and federal checks have been delayed through no fault of the applicant. However; we believe that applicants must make a good-faith effort to submit their renewals at least 60 days in advance of the ID expiration date. The applicant must take some responsibility to submit the renewal in a timely manner. TSAC does not support any of the changes that reinstitute the temporary taxi driver ID. We strongly object to placing taxicab drivers on the road who have not passed the test or undergone a criminal background check performed by the Central Repository in the FBI. It is unwise to offer temporary IDs if we are interested in improving customer service and protecting the public interest. And then I want to reiterate Mr. Holmes' comments on the Pikeville Criminal Justice System, it's very encouraging in the turn around time, we've had a few drivers that have gone to there, and the reports come back very quickly. TSAC advises that we continue to require that the criminal background information be reported by the government entities and not a private vendor, who may not have access to the same comprehensive data. Further more the proposed Bill neglects to clarify that the industry not the driver should pay for the third party reports, or that all applicants should have a background check from all jurisdictions in the state of Maryland and Virginia, and from Washington, D.C. This is an oversight that can serious implications if an applicant lives in Maryland and has a criminal record in Virginia. TSAC does not see any rational that serves the riding public in issuing temporary IDs before the test is passed. Driver applicants must first pass the test so that we are reasonably convinced that they know how to use a map, comprehend English well enough to understand where the passenger requests to go. Know how to make change in American currency, and know Maryland driving law before they are allowed to provide service to customers. There is no reason to do otherwise. Should I...

Council President Leventhal,

Just if you could wrap up, maybe a final sentence.

Wilson Krahne,



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1 You have the text in my thing, but I would like to comment that we received the  
2 emergency Bill at the time of our last meeting. We have had discussions on most of  
3 these matters, but a formal vote has never been taken, so, and safety is a major  
4 concern to TSAC.

5  
6 Council President Leventhal,  
7 Thank you very much. Ms. Arens.

8  
9 Retha Arens,  
10 Is that on?

11  
12 Councilmember Praisner,  
13 Yes.

14  
15 Retha Arens,  
16 My name is Retha Arens and I'm speaking today on behalf of Reza Raofi, the owner of  
17 Action Taxi. Reza immigrated to the United States in 1976. In 1979 he started driving a  
18 cab for Barwood and acquired his first PVL a year later. In 1989 he incorporated Action  
19 Taxi. Action owns 30 cabs and has nine affiliates. In fiscal year 2005 we provided over  
20 117,000 trips to taxicab passengers in Montgomery County. Action Taxi strongly  
21 supports Bill 27-06. This Bill corrects some of the most negative unintended  
22 consequences of the revised Chapter 53. The most important correction is the  
23 reinstatement of a more immediate taxicab driver identification card. The proposed  
24 changes in the bill would make it easier and faster for the County to license drivers,  
25 helping the fleets to hire new drivers, while still protecting the public. Since the revised  
26 Chapter 53 was implemented almost a year and a half ago, Action Taxi has only been  
27 able to hire one brand new driver. We have hired drivers but they have all come from  
28 the other fleets, and we have lost more drivers to the other fleets, or to them leaving the  
29 industry that we have been able to hire. The current driver licensing process can take  
30 up to 90 days. The Director talked about Pikesville in a State ID check, but a Federal ID  
31 check is what is required as of March 1st, and that still takes 60 to 90 days. The driver  
32 has to pay nearly \$100 in fees for the application, their driving record, their physical  
33 exam, the licensing test, and the ID itself. These high hurdles for entry into an uncertain,  
34 potentially dangerous low paying job, are too much for all most all entrants. It is so  
35 much quicker an easier to get a license through the PSC to drive a limousine or to get a  
36 license to drive a cab in most any of the other surrounding counties, and earn as much  
37 or more. This is born out by DPWT's own statistics that show a drop of almost 66% in  
38 new applications, and a drop of 343% in temporary IDs when comparing the nine  
39 months ending March 2005 with March 2006. The Department has not provided the  
40 industry with anymore recent data, but with the complete elimination of the temporary ID  
41 in March, we expect that the application rate, and certainly the number of newly  
42 licensed drivers has fallen off even more. In order to serve passengers we need a





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1 reliable stream of good drivers, the current system does not provide that. Action Taxi  
2 wants to expand, and we have anxiously awaited a new PVR allocation for almost ten  
3 years. If we are going to expand we need a growing stream of drivers, not a stagnant or  
4 decreased one. The changes in this Bill are vital to our fleets continued operation, our  
5 growth, and our ability to provide good customer service.

6  
7 Council President Leventhal,  
8 Thank you very much. Ms. Lynch.

9  
10 Julia Lynch,

11 Good afternoon, my name is Julia Lynch, and I am speaking today on behalf of the  
12 Coalition for a Competitive Taxicab Industry, to request your support of 27-06. CCTI  
13 represents the interest of Montgomery County's three primary taxicab fleets, Action  
14 Taxi, Barwood Taxi, and Regency Taxi. Together these fleets operate nearly 570  
15 vehicles, and service over 1 million taxicab passengers each year. It's nationally  
16 recognized that taxicab driving is more commonly an interim occupation, and not  
17 typically a career path. Driver turnover is not unusual in this or other areas of the  
18 passenger transportation industry. Therefore, the need to quickly and responsively  
19 replace drivers is essential, Montgomery County is no exception. Among the revisions  
20 to Chapter 53 in 2004, the long standing provisional or temporary taxicab driver  
21 identification card was eliminated. The resulting process has extended the time it takes  
22 an applicant to receive an initial ID from less than a week to as long as 90 day. Coupled  
23 with the code's extensive licensing requirements, when compared to nearby jurisdictions  
24 the County's taxicab driver licensing process has significantly hindered the industry's  
25 much needed access to the potential driver pool. Statistics provided by the Department  
26 to TSAC in April seemed to show nearly a 66% decrease in the number of newly  
27 licensed drivers in the first year of the code's new requirements. Though these statistics  
28 also indicate a slight increase in driver retention, the result is still a slow and steady  
29 decline in the total driver workforce. This has reduced the number of available taxicabs  
30 and as a result the number of customers receiving timely taxicab service. Though the  
31 impetus for code revisions was to improve taxicab service, unfortunately the fleets are  
32 even more challenged to meet the demand. This is without regard to the extensive  
33 customer service requirements recently proposed by Executive regulations 13-06 and  
34 15-06, that would set extremely high standards for timely service, and measure a fleet's  
35 performance to determine if a fleet is allowed to keep and acquire new passenger  
36 vehicle licenses. In order to comply with the County's vision, and stay in operation the  
37 fleets will be forced to release drivers who can not meet these standards. Driver attrition  
38 will escalate, yet unless the licensing process is modified the fleets will not be able to  
39 acquire new drivers in replacement. The Bill does not suggest circumventing public  
40 safety safeguards, simple reordering them in an effort to expedite the licensing process,  
41 and mirror what is done in other jurisdictions. The industry needs access to the  
42 workforce in order to operate their taxicab fleets, and better service taxicab customers



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1 in Montgomery County. This legislation will successfully expedite the process while  
2 maintaining important high standards for public safety safeguards. Please support Bill  
3 27-06, and attached to our testimony is also a jurisdictional comparison of each of the  
4 steps in the process for your review.

5  
6 Council President Leventhal,  
7 Thank you, Mr. Perez.

8  
9 Councilmember Perez,  
10 Thank you, Mr. President. Thank you all for your testimony, I appreciate it, and General  
11 Holmes, always a pleasure see you here today, and always enjoyed working on issues  
12 with you, and even when we've disagreed we've always been able to do it without being  
13 disagreeable.

14  
15 Councilmember Denis,  
16 Watch out.

17  
18 Councilmember Silverman,  
19 When he says with all due respect, you know...

20  
21 [LAUGHTER]

22  
23 Councilmember Perez,  
24 You know, I remember working with Senator Kennedy on the immigration Bill 10 years  
25 ago, and he got his clock cleaned by Strom Thurmond on some amendment, I don't  
26 remember what the amendment was, and Thurmond just cleaned his clock, and then he  
27 walked over to him and he was hard of hearing, Senator Thurmond, and he goes over  
28 to Senator Kennedy and goes, "I consider you my friend!" Right after he just kick his  
29 you-know-what. Art, I consider you my friend.

30  
31 Art Holmes,  
32 I understand.

33  
34 [LAUGHTER]

35  
36 Councilmember Perez,  
37 We passed this bill a year ago, and I confess, or whatever it was, over a year ago, and  
38 I've continued to have real questions about whether, what the effect was, and laws are  
39 about experimenting, and doing what you think is the best thing, and being willing to test  
40 those assumptions, and recognizing that we need data to help out, and figure out  
41 whether we did the right thing, or whether there were consequences intended or  
42 otherwise that inured from what we did. If I'm correct, if, and I think I got the data from





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1 you, there are something like 100 less drivers today than there were at the time that we  
2 passed...

3  
4 Art Holmes,

5 I think at that time, I'm not sure what that is now, Nancy?

6  
7 Councilmember Perez,

8 Is that ballpark?

9  
10 Councilmember Floreen,

11 Yes that's ballpark.

12  
13 Councilmember Perez,

14 Ballpark, and the touchstone was always customer service, we wanted, the purpose of  
15 this was we wanted to increase customer service, and 100 less drivers to me is, raises  
16 a real red flag about whether we're meeting the fundamental goal of the Bill, which is to  
17 address the customer service concerns, and I, that was really the first observation that  
18 was red flag number one. Secondly looking around the region, it strikes me that we  
19 have opportunities to figure out what other jurisdictions are doing, and this is really, I  
20 guess I don't necessarily ask a question today, but other than can we between now and  
21 when we take it up in the Committee or the full Council, really get a handle on what  
22 other jurisdictions are doing, because I appreciate your points about, we don't want  
23 drivers who are, either have criminal records for offenses that we wouldn't want them on  
24 the road for. I appreciate all of those concerns I think the proposal addresses those  
25 concerns in a way that is sensible, and will insure safety, and I would like us to really get  
26 a handle on what other jurisdictions are doing, because as I understand it, and again I  
27 could be wrong, but the proposal that we have put forward today basically puts us on  
28 par with the practices in our adjoining jurisdictions. So we're not -- we're actually not  
29 doing anything that is any different than what other jurisdictions are doing, and I don't  
30 believe that what other jurisdictions are doing has had the effect of allowing people that  
31 we wouldn't want on the road to be driving a taxicab. And so, I want to make sure that  
32 we have a level playing field here, and I would, I hope that we can come to an  
33 agreement. We may not ultimately agree on language and what we should do, but I  
34 hope that we can come to an agreement on what other jurisdictions are doing, things of  
35 that nature, so that we can then ask the question, well if in fact all these other  
36 jurisdictions have the temporary identification card, and if in fact the temporary  
37 identification card has not resulted in a flood of ill-equipped, or unqualified people on the  
38 road, why is it that we have to do things differently in Montgomery County? Why is there  
39 a different Montgomery County way? Is there something different about driving in  
40 Montgomery County that requires a higher bar for applicants? I'd really like to get a  
41 handle on that, and I'm not necessarily asking for that answer today, but I hope we can



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1 at least agree on sort of the basic, you know, the baseline set of facts and experiences  
2 from around the region. So that that can inform our judgment in the weeks ahead.

3  
4 Art Holmes,

5 We will try to get that out, I do not know whether we will have it by the 13th when we  
6 meet with the T&E Committee, but...

7  
8 Councilmember Perez,

9 I don't expect that will happen, but...

10  
11 Art Holmes,

12 We will try to get that so we can compare.

13  
14 Councilmember Perez,

15 Okay, that would be very grateful, because I really, I listened to your testimony with  
16 great interest, and I do believe that some of those, I believe that your concerns about  
17 certain provisions can be addressed in a way that strikes the appropriate balance. So,  
18 and I appreciate TSAC's very important roll, and you've done a lot of great work, so  
19 thank you very much.

20  
21 Council President Leventhal,

22 Can we clear up here now this, the conflicting assertions that are made about the ability  
23 to get a criminal background check promptly in Pikesville? And then Ms. Arens  
24 assertion that that we aren't able to get a federal background check, but only a state  
25 background check, is this not a, is the CJIS not the federal background check?

26  
27 Art Holmes,

28 The CJIS is not, that's the state background check, but they've indicated that the federal  
29 government will be using the same thing, and if they can out the records over to the  
30 federal government electronically, that saves time. I just have something from an e-  
31 mail thing here. I've asked the Director to give us some more information, so I'll  
32 probably have more information when we come on the 13th about this system, but this  
33 system, we believe is going to cut the time tremendously, and we're talking about a  
34 week or 10 days, I believe, in the CJIS, and it should be no more than a week or so with  
35 the FBI, and I don't know that we're going to do any better than that with a private  
36 vendor.

37  
38 Council President Leventhal,

39 But does this background check in Pikesville meet the requirements of the County's  
40 statute or not?

41  
42 Art Holmes,



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1 Yes.

2  
3 Council President Leventhal,  
4 Nancy come on up if you're going to speak. Press the button please. And introduce  
5 yourself please for the record.  
6

7 Nancy Collin,  
8 My name is Nancy Collin. I am one of the County Attorneys that provides legal advice to  
9 the Department of Public Works and Transportation. And the Department provides --  
10 obtains criminal background checks from the Maryland Code of Criminal Procedure,  
11 Section 10-234 B2D, which provides a, that they can get a request for the criminal  
12 background check, and they either get it through CJIS or through the FBI. And what  
13 happens is the individual provides the fingerprints, and the fingerprints go to the State's  
14 Central Repository, which then provides the applicant's fingerprints, and the State's  
15 Central Repository can get the background both through the State's Central Repository,  
16 and the Federal Central Repository, and/or through the Federal Bureau of Investigation.  
17 And what the Pikesville is doing is taking those fingerprints and putting it on a scan  
18 electronically and expediting the process.  
19

20 Council President Leventhal,  
21 So this breakthrough, which I believe neither Mr. Perez nor I were aware of when we  
22 introduced this bill, to delay the background check requirement which according to  
23 testimony has been announced on June 25th, in and of itself does not satisfy the  
24 requirement.  
25

26 Nancy Collin,  
27 No, it does, because...  
28

29 Council President Leventhal,  
30 No, that's not what you said, as I understand that it does not satisfy the requirements of  
31 County law but makes it a little quicker to be able to get the federal clearance. In and of  
32 itself, the check in Pikesville does not fulfill the federal clearance requirements.  
33

34 Nancy Collin,  
35 Yes it does, because the Pikesville check is another mechanism through which the  
36 applicant can obtain the background check. It is a CJIS check.  
37

38 Council President Leventhal,  
39 Ms. Lynch.  
40

41 Julia Lynch,



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1 If I may, the crux of the issue is the fact that the state of Maryland currently conducts  
2 employment application, applicant criminal background checks via a manual system.  
3 You go in and you have to put an ink fingerprint on your fingerprint card. That gets sent  
4 to Pikesville which is where the Main office, the state check is handled there. Pikesville  
5 then sends that fingerprint card manually on to the FBI in West Virginia in which it's  
6 processed, the results are sent back to the department. It is true that they are merging  
7 towards, and we have talked about this previously with the TSA program, how the TSA  
8 is requiring Commercial Truck Drivers to have now a complete criminal background  
9 check. The way the state of Maryland has chosen to transition their manual process to  
10 and electronic process through their MVA sites and through a test pilot at their main  
11 Pikesville office. They are on the edge of rolling that out, but they're looking at 18 to 24  
12 months before that software will be opened up. Beyond just Pikesville that is your  
13 primary location. Before it is expanded to serve the masses of folks who require  
14 employment criminal background checks, your teachers, your child care workers.

15  
16 Nancy Collin,

17 The distinction is for individuals who are arrested for a major criminal offense, when  
18 those individuals are arrested and the police take them in to book them and they  
19 immediately do a criminal background to see what their offenses are, they do and the  
20 electronic criminal offense. That is the type of criminal background check that we are  
21 trying to determine for you. And what Mr. Holmes respectfully said he is trying to  
22 assess, the timing, to see if that is what Pikesville is able to return quickly. That when  
23 suspect is booked and police ascertain of the suspect has other crimes, they  
24 immediately due and electronic finger check to determine what other crimes the suspect  
25 may have committed. That is an electronic immediate finger check. That is the type of  
26 finger check both Ms. Lynch and I are talking about.

27  
28 Retha Arens,

29 With all due respect, the current chapter 53 requires the complete federal check. Even if  
30 the driver is able to get up to Pikesville and have an expedited process. I haven't heard  
31 from the department how long this expedited process is in getting a complete federal  
32 check back.

33  
34 Art Holmes,

35 As I indicated when I said something, I said you would go there, they would expedite it,  
36 they could do it in a matter of days or weeks, and that the same thing could happen  
37 because they're going to be electronically transmitted to the FBI. That should be the  
38 same kind of change. I am not saying to you that it is going to take weeks and I don't  
39 see anything, we have not done this for a month or two months. I am asking for a delay  
40 so we can see how this goes.

41  
42 Julia Lynch,



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1 All along CCTI has been asking for a temporary reinstatement of the ID until the  
2 technology catches up with the need. We're not asking for permanent...

3  
4 Art Holmes,

5 That is not the only thing. That is not the only thing I was objecting to. I am objecting to  
6 having someone driving a taxi who has not taken the test and objecting to him having  
7 not taken the test, not having also a background check. I think we have put our citizens,  
8 our residents at risk when we do that.

9  
10 Julia Lynch,

11 I do understand [INAUDIBLE] specifically to the technology issue, I apologize for that.

12  
13 Art Holmes,

14 I think we have to look at, I have asked them to give me more on this technology. As I  
15 said, I got this off of the internet.

16  
17 Council President Leventhal,

18 Let's not have exchanges among the witnesses. The way it works is Councilmembers  
19 ask questions, witnesses answer questions.

20  
21 Art Holmes,

22 I apologize, but when you say I have said something that I haven't said...

23  
24 Council President Leventhal,

25 Okay, well, we will have a work session on this in the T&E Committee Thursday  
26 morning. And the distinguished Chairwoman of that Committee will have the opportunity  
27 to ask many questions that day, but she has a question now, as well. Ms. Floreen.

28  
29 Councilmember Floreen,

30 I wanted to say we will continue this exchange in the Committee and clearly there  
31 continue to be issues. I want to ask the industry representatives, did I hear correctly that  
32 there are 100 fewer drivers available for taxi service currently?

33  
34 Retha Arens,

35 That is what Ms. [Cotts] just said.

36  
37 Councilmember Floreen,

38 Is that your experience as well?

39  
40 Retha Arens,

41 Yes, our experience is that we are down, and as I said we've hired one new driver.



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1 Councilmember Floreen,

2 If you could provide those by Thursday, information as to your employment your drivers  
3 available for taxi service, I know that you also engage in other kinds of services that are  
4 not simply taxi service. I know you have contracts with Metro Access and other kinds of  
5 arrangements. But I would like to know the number of employees that you do have had  
6 available for taxi services, since we've been dealing with this issue over the past couple  
7 years, I think that would be helpful. I just wanted to say about the Council President  
8 indicated the record technically closes today. We will as usual welcome engagement  
9 from all of the interested parties at the Committee meeting. So, all come on down.

10  
11 Council President Leventhal,

12 Let me just say as far as the record closing, I would like to get consent to hold it open  
13 for another week. I just read the paper that was given to me, but the Council will act  
14 next week.

15  
16 Councilmember Floreen,

17 Why don't we discuss the scheduling of this Committee -- timing on this -- we'll just have  
18 to work that out. I'm scheduled to meet again until the 25th. We could put it over until  
19 then. It's the sponsors who have asked for it to be handled this way. Why don't we  
20 resolve that and let the stakeholders know?

21  
22 Council President Leventhal,

23 Without objection, though, I am going to suggest that the record be held open for an  
24 additional week. Because I know there is at least one interested party who is out of town  
25 who contacted me.

26  
27 Councilmember Floreen,

28 We will always entertain commentary from folks up until the point of decision.

29  
30 Council President Leventhal,

31 Oh, I see. Well, the gentleman -- Barwood Cab is represented here in the next group so  
32 let's wrap up this group and we will close the record today because Barwood Cab is  
33 represented here today. And so Group B includes John Marshall, Bob Jango, and  
34 Michael Healy. Okay, Mr. Marshall, as soon as you are ready, please press your button  
35 and proceed.

36  
37 John Marshall,

38 Good afternoon. My name is John Marshall, I am here in place of Lee Barnes, who  
39 wishes to be here. And so unfortunately you get me instead of Mr. Barnes. First of all,  
40 I'd say that we are even here is a testament and credit to this Council's willingness to  
41 listen and to consider necessary amendments on a bill whose creation last year was  
42 long and hard and its effects far reaching. We first of all wish to thank the Council in





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1 general and the Committee in particular for taking the time to revisit this very critical  
2 issue. You have written the testimony; I would say to you two things. First of all, as Mr.  
3 President has already said, without drivers, there is no customer service. And to cut to  
4 the chase, we have presented some statistics for you. Currently, right now, there are  
5 fewer drivers actually licensed than there are cabs on the road or available for driving in  
6 this County. Of the 556 drivers as of June, we have no real notion of how many of those  
7 drivers actually are not driving, have left the business and still have a license. We think  
8 it's around 50 to 75 of the 556. So even if we could put every driver available -- every  
9 driver who's licensed, we couldn't fill all of the cabs that are currently licensed in this  
10 County. Traditionally Montgomery County did much better. Nationally, a healthy industry  
11 will show two drivers for every cab. Locally it is less than that, but Montgomery County  
12 is less than one driver per cab. We cannot serve the customers if we don't have the  
13 ability to go replace a driver who goes on vacation or has an injury or simply leaves the  
14 business because he goes on to another job. Right now, if somebody leaves, there is no  
15 driver available for any of the fleets unless they raid another fleet to replace the driver  
16 who leaves. So we would ask that that be considered. There are statistics with our  
17 testimony. I would like to address just briefly the second point, which is this new CJIS  
18 procedure. I would suggest that there's a very simple solution to this, which is what the  
19 bill proposes is for the fleets to produce a private record -- go to a private company to  
20 produce a record for each driver applicant that costs money. If, in fact, the CJIS process  
21 takes ten days or whatever the time period, the permanent ID would get issued and  
22 everybody will be happy. The question is timing. There's no fleet who's going to pay for  
23 the private check if CJIS does it and does it quickly and gets it out in a timely basis. So  
24 I'd ask the Council not necessarily to be lured by this new promise of an exciting new  
25 development. If it works, great, the industry will respond and we will have a permanent  
26 ID in place and the need for a temporary ID may evaporate, but until that is proven, we  
27 need the ability to get drivers on the road and the bill as it is currently posited, does  
28 protect the public. All we have done is added another layer. Indeed, there will be some  
29 delay in getting the final word on criminal background checks on a national level for a  
30 temporary basis, but given the crying need we have for drivers, we can't serve the goals  
31 of the rest of the bill without them. Thank you.

32  
33 Council President Leventhal,  
34 Thank you. Mr. Jango?

35  
36 Robert Jango,  
37 Thank you, Mr. Leventhal. My name is Robert Jango, 1220 East West Highway, Silver  
38 Spring, MD, Apartment 909. I am a small owner; I'm not a driver and I'm not a fleet  
39 owner. I own one license. This is a brief summary of what I vote. And if anybody wants  
40 the full testimony, my e-mail address is jbob59@aol.com. George, I wasn't on this list to  
41 speak. I called in late yesterday and she said she'd talk to the County President and I  
42 didn't expect to be here. Thank you. What I'm giving is background on the amendment.





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1 The temporary ID is one of the legs that holds up the old but effective practice of how  
2 rental fleets inflate the number of cabs that it rents. Asked about the prevalence of this  
3 practice, Bruce Schaller [operation] smiled and said, "Where do you think I'm called in?"  
4 He did add that distributing calls -- and that's the respectable name for what is  
5 happening -- can be kept below the radar if it is not taken to extremes. We believe that a  
6 taxi industry should want to serve customers and shouldn't be regulated that way. It  
7 can't be regulated. Increasing -- I have to skip that. Tom Perez maintains that without  
8 this temporary ID system, the service will fall below the already poor level that it is.  
9 Unfortunately, you're correct. I don't agree with it, but it is probably the responsible thing  
10 to do. I don't have an argument against that. I am going to skip forward. I have been  
11 trying to follow but -- What we're going to do, this private vendor who is going to fill in for  
12 the government, it had better be airtight. Here is what is happening. The cab industry in  
13 Montgomery County is becoming slowly an informal part of the criminal world. In  
14 Queens, New York, it's the service that brings you illegal drugs to your door. And these  
15 are regulated legal cabs; they're called gypsy cabs, not the medallions. And we're  
16 moving in that direction. Again, I can't go into details of that. Number two, a terrorist is  
17 going to detonate a bomb inside the military base. Not me, but it's going to happen. I  
18 feel strongly about that; it's too easy. When that happens, maybe in 20 years or 20  
19 days, when that happens, they're going to look to this amendment. As long as it's  
20 airtight, as long as they're doing exactly what the federal government would do, I am  
21 fine with it. But it had better be airtight, because they're going to come after you and it's  
22 not worth it. We don't want to lose any one of you. I can't emphasize that point enough. I  
23 had more to say but I just wanted to keep it low and I can't fill in all the details. Feliciano  
24 is a driver, he wanted to -- he's also in one of our cabs, he wanted to speak but he didn't  
25 know how to go through the process.

26  
27 Council President Leventhal,  
28 Okay, thank you, Bob. Mr. Healy.

29  
30 Michael Healy,

31 Thank you. My name is Michael Healy. I'm the Assistant Manager with Regency Cab.  
32 We've got some short comments we'd like to make on behalf of Regency Cab. We are  
33 in support of the bill. Passage of this bill will have a significant impact on the availability  
34 of the County taxicab service by increasing the driver labor pool and increasing the  
35 number of taxicabs available to the public. The industry's labor pool depends largely on  
36 a lower income transient population. That population often cannot afford to live in our  
37 County, resulting in labor shortages for other transportation or service industries. This  
38 shortage worsens for our industry when the more qualified applicants choose other  
39 opportunities, rather than waiting the two or three-month application period of the  
40 current system. I can tell you personally, back in June of 1980, when I was between  
41 jobs, when I got into this industry, I wouldn't have been here today. I wouldn't be  
42 working in the cab industry for 26 years. Because I wouldn't have waited what I felt was



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1 a two or three-month period. Basically, the industry is losing potentially good drivers to  
2 other transportation or service industries. It is crucial for recruitment purposes that an  
3 application process be expedited. This bill accomplishes this goal by offering a  
4 temporary ID and delaying the federal background check while still providing public  
5 safeguards. The issue of 70 new passenger vehicle licenses will provide the public  
6 increased access. More licenses will provide an increase in taxis, service hours, and  
7 competition. Service to the public will improve with the increased competition. Regency  
8 recommends that the standard for a safe driving record be more than -- be no more  
9 than four points under the MVA procedures, Regency also supports that an applicant be  
10 eligible to reapply for an identification card after one year of denial or revocation. I thank  
11 the Committee for this opportunity to testify in support of Bill 27-06. Regency firmly  
12 believes the bill benefits both the taxi customer and the industry.

13  
14 Council President Leventhal,

15 Thank you for your testimony. There are no questions for this group. We appreciate  
16 your being here. Agenda Item 13 is a public hearing on Bill 29-06, Housing Advisory  
17 Commission Establishment, which would establish a Housing Advisory Commission and  
18 generally amend the housing policy law. The Planning, Housing and Economic  
19 Development Committee will schedule its work session at a later date. Anyone who  
20 wants to submit additional information for the Council's consideration should do so by  
21 the close of business July 21st. We have six witnesses on our list: Norman Dreyfuss,  
22 Robin Ficker, Meredith Weisel, Sharon London, Robert Goldman, and Becky Wagner.  
23 Mr. Dreyfuss, please begin. Press your button and state your name for the record.

24  
25 Norman Dreyfuss,

26 My name is Norman Dreyfuss. I am a Commissioner on the Housing Opportunities  
27 Commission and I appreciate the opportunity to testify today on Bill 29-06, Housing  
28 Advisory Commission. Basically we submitted written testimony and I am not going to  
29 read that, but the Commission strongly supports the goal and role of the Advisory  
30 Committee. Our comments today suggest modifications to make the Committee even  
31 more effective in achieving its goal. Our vision is that the Advisory Group is to bring  
32 together experts and practitioners who struggle daily to promote and create affordable  
33 housing and to provide support services sometimes connected to what it takes to  
34 provide affordable housing. Some examples can be advocacy at master plan,  
35 presentations at both Park and Planning and the Council for Affordable Housing, a  
36 permit process expedition at all of the permitting agencies from WSSC to Park and  
37 Planning to Department of Permitting Services, and other such ideas that advocacy  
38 groups face every day. We suggest the group be composed completely of advocates  
39 with demonstrated track records in affordable housing. Their experience and as a group  
40 can recommend County actions that can take this difficult process and move it forward.  
41 Specifically, some of the changes we have suggested are in the testimony, but the first  
42 one, we think the name should be changed. "Commission" is I think a bit confusing. I



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1 think "task force" as Ms. Praisner suggested, is probably a good name. "Committee"  
2 may be okay but it is too close to "commission." We also support a specific timeframe  
3 for a report to be issued to the Council so that we don't have a group that goes on in  
4 perpetuity without a directed result. And thirdly, it is important, I believe, that the  
5 Committee have a sunset provision. It doesn't mean that the Council may not reinstitute  
6 and continue it for another year or two years or three years, but often in the County we  
7 have commissions that go on and on and you have a big long list in the newspaper of  
8 people that are sought for the commissions because nobody volunteers. Pretty soon,  
9 everybody forgets what it was for in the first place. So I think with a specific task, a  
10 timeframe, we can achieve the goal. Additionally, we think that DHCA, HHS, Park and  
11 Planning HOC should have voting seats on this Commission and the final report that it  
12 recommends. Thank you for the opportunity and we look forward to the public session  
13 at the PHED Committee.

14  
15 Council President Leventhal,  
16 Thank you. Has Mr. Ficker left? I saw he was here earlier. Ms. Weisel.

17  
18 Meredith Weisel,  
19 For the record, I am Meredith "Wise-el."

20  
21 [LAUGHTER]

22  
23 Meredith Weisel,  
24 Most people say it wrong; it's not "weasel" though. I am the Vice President of Public  
25 Policy and Legal Counselor for the Greater Capital Area Association of Realtors. And  
26 you also have my written testimony so I am not going to read it, I'm just going to  
27 highlight a few things. I would just state that the realtors strongly support the bill. We do  
28 see the need for a Housing Advisory Commission. We agree it probably should be called  
29 the "task force" also, not to be confused with HOC. We think the Commission, or task  
30 force if it gets changed, is extremely important because the County Council has a  
31 difficult task in implementing housing programs and looking at land-use planning that  
32 takes into account housing affordability and that this Commission or committee or task  
33 force will be very helpful in helping to analyze the planning process and look at what is  
34 currently going on in the real estate market and look at the current trends and look at  
35 what planning could happen in the next ten years, 20 years, 30 years. And the supply of  
36 land that the County has as well, and that they can help to track this along with the  
37 County's housing policy and to properly implement the County's housing policy. This will  
38 help also keep up with the challenges of the real estate market. We've had an  
39 interesting five, six years. It has softened a little bit right now, but we don't know what is  
40 going to happen in the next five years or ten years. And what the community and  
41 homeowners' needs are, and that the commission can look at that and they can talk with  
42 the community and housing advocates. We are also -- we'd like to thank



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1 Councilmember Silverman for including persons involved in real estate sales as part of  
2 the group of individuals that the County Executive will appoint to the commission.  
3 Realtors do have a unique insight into the real estate market, particularly as it relates to  
4 the resale market and we think that that's going to be even more of the future of the  
5 County as the supply of land dwindles down, and that will affect housing affordability. So  
6 with that being said, we support the establishment of the commission and -- that's it.  
7 Thanks.

8  
9 Council President Leventhal,  
10 Thank you. Sorry for mispronouncing your name. Sharon London, also whose name is  
11 misspelled here.

12  
13 Sharon London,  
14 Thank you. I am here to support Bill 29-06 that creates a Housing Advisory  
15 Commission. The Montgomery County Coalition for the Homeless welcomes any effort  
16 to highlight the housing needs of our residents. In fact, the proposed composition of this  
17 commission closely resembles the composition of the Interagency Housing work group  
18 endorsed by the County Executive in response to homelessness in Montgomery County  
19 beginning to end, which addresses the needs of the poorest of the poor, our homeless,  
20 and our special-needs folks with very low income. It's the Interagency Housing work  
21 group that came to a consensus on a definition of "special needs housing" advocated  
22 for the [Dee Brunell] subsidy program funded by the Executive and is reviewing section  
23 25A of the Housing Code. We saw then the value of coalition building around the issue  
24 of housing and the consensus allowed us to work with what are often competing  
25 priorities and addressing them in a single forum. Perhaps this existing work group, with  
26 representative currently from the Department of Housing Community Affairs, Health and  
27 Human Services, the Housing Opportunities Commission, and Park and Planning  
28 nonprofit developers and service providers could be incorporated into a new  
29 commission. And while I don't want to outline an entire committee structure for you, I'd  
30 like the Council to know that there is increasing pressure from HUD, which provides  
31 about \$6 million of funding for homeless programs annually to form a separate decision-  
32 making body for a continuum of care. And they are recommending it broadly  
33 representing public and private interests, including consumers of services with  
34 responsibility around planning and funding. HUD is fairly prescriptive about what they're  
35 looking for. They include the percentages of public versus private representation, an  
36 elected Chair and Co-Chair, representing both the public and private sector with  
37 staggered two-year terms and a Chair position rotating between public and private  
38 development of a code of contact with language regarding refusals on fiscal matters.  
39 Again, perhaps this could be a subgroup of a Housing Advisory Commission. It would  
40 certainly give the structure and credence that's required if we want to remain  
41 competitive in the federal funding arena. One additional comment, having seen other  
42 commissions, I think it's really important to make sure -- and I saw the language in the



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1 proposal -- but to adequately staff this. I'm excited about the prospect of what a group  
2 like this could do, but I'm also realistic about the amount of work that's involved.  
3 Housing is an issue that really needs our attention. With limited resources, our  
4 community has to prioritize often affordable housing. The entire spectrum of housing,  
5 from people with no place to live to Workforce Housing for those making \$100,000 a  
6 year and still unable to live in our community needs our attention. The choices aren't  
7 simple. It is not really a choice to have to decide between housing for the mentally ill or  
8 housing for the developmentally disabled; to try to prioritize of police officers over  
9 teachers, and of course what about the needs of those with no homes? Bringing experts  
10 within the community together for ideas for policy for solutions can only help us with this  
11 critical issue. We look forward to a Housing Advisory Commission that works to provide  
12 valuable guidance to the County as we continue to face these decisions about housing.  
13 Thank you.

14  
15 Council President Leventhal,  
16 Thank you. Robert Goldman?

17  
18 Robert Goldman,  
19 Thank you, County President, Members of County Council. Thank you for providing me  
20 this opportunity to testify. I'm Robert Goldman, President of Montgomery Housing  
21 Partnership. MHP is a private nonprofit developer of affordable housing in Montgomery  
22 County with 933 units of rental housing in our portfolio, with the mission of preserving  
23 and expanding quality affordable housing. I'm here to testify in support of Bill 29-06  
24 calling for the establishment of a Housing Advisory Commission. We face an affordable  
25 housing crisis in the County. Housing prices have been increasing 10% to 20% a year.  
26 Most of the neighborhoods in the County that historically serve first-time homeowners  
27 are no longer affordable to the first-time homeowner. Even for renters, housing costs  
28 are rising. It was recently reported that vacancy rates for rental housing in the DC  
29 metropolitan area are less than 3%. This tight housing market is putting a severe  
30 pressure on rents. People working in this community -- those working in the retail and  
31 service industries; our teachers, nurses, fire fighters -- they cannot afford to live in the  
32 County. Those who do must make tough choices between food, clothing, housing, and  
33 medical care for their families. An Advisory Housing Commission will provide a  
34 structured avenue for housing providers, like MHP and other nonprofit and for-profit  
35 providers, to bring innovative and thoughtful housing ideas before elected officials. It  
36 would provide a mechanism for those ideas to be debated, vetted, and gain widespread  
37 public support. In our work, we are in contact with affordable housing groups around the  
38 country and come across best practices in other jurisdictions. We need good bright  
39 people helping to research these best practices and bring these ideas before you, the  
40 policy makers. Lastly, a broad-based Advisory Housing Commission can help bring  
41 much-needed attention to the need for affordable housing in our community. And lastly,  
42 I'll just say as we're throwing out ideas, I like the idea of a blue-ribbon something or





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1 other. It gives some added panache to the idea of this much needed affordable housing  
2 issue. And lastly, I'd say from the experiences I've had with other commissions and task  
3 forces, oftentimes great recommendations come out. The trick and most important thing  
4 is to bring those recommendations to fruition. Thank you for allowing me to testify today.

5  
6 Council President Leventhal,  
7 Thank you very much. Becky Wagner.

8  
9 Becky Wagner,  
10 Community Ministry of Montgomery County supports Bill 29-06, which creates the  
11 Citizens' Housing Advisory Commission to advise the Council and Executive on  
12 affordable housing issues. The Commission or whatever we shall call it would serve as  
13 an excellent tool for educating each other about the shortages and gaps for many types  
14 of housing and a forum for developing solutions to our housing crisis. At CMMC, one of  
15 our greatest challenges is to make the case for low income special needs populations,  
16 low and fixed income seniors, housing for working poor families. What we have today  
17 are many competing needs and interests. In a County where teachers, fire fighters,  
18 nurses, and police officers cannot afford housing, where will we find room for the  
19 working poor; those families and individuals working two or three jobs, cleaning our  
20 homes, caring for our children, working in our kitchens and yards, and not able to house  
21 their families for all of their hard work? Our County is fortunate to have many citizens  
22 with broad experience in the housing field. Some of our housing policies are excellent  
23 and serve as models. We also know there are best practices in other parts of the  
24 country which serve as models that could be successful here. A commission will provide  
25 a forum for reviewing and assessing different policies and strategies from which  
26 important legislative decisions could be made. James Surowiecki's book "Wisdom of the  
27 Crowds" provides an excellent perspective on bringing groups together to act  
28 collectively to solve problems. He says there are four key qualities required to make a  
29 crowd smart. One, it needs to be diverse so that people are bringing different pieces of  
30 information to the table. Two, it needs to be decentralized so that no one is at the top  
31 dictating the crowd's answer. And it means a way of summarizing people's opinions into  
32 a collective a verdict and people need to be independent. Three, it needs a way of  
33 summarizing people's opinions into one collective verdict. And four, people in the crowd  
34 need to be independent. The housing crisis we are living with could certainly use the  
35 wisdom of a crowd and the Citizens' Advisory Commission seems a good place to start.

36  
37 Council President Leventhal,  
38 Great, Thank you all very much for your testimony. Mr. Andrews?

39  
40 Councilmember Andrews,  
41 Is there anything that this commission would do or will do that is different from what the  
42 Housing Opportunities Commission is doing now, or could do now?



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1 Norman Dreyfuss,

2 Well, I think this commission pulls together different groups that are all trying to do the  
3 same thing and brings their ideas to one place. I believe that all of the groups are facing  
4 similar problems, but not the same problems, and maybe have come up with solutions  
5 that others haven't. The Housing Opportunities Commission, Montgomery Housing  
6 Partnership, DHCA, all are trying to do the same thing but they're doing it separately.  
7 The Housing Opportunities Commission isn't really coming up with ideas that are shared  
8 with everybody, except there are ones that they do to implement their programs. So I  
9 think it would be good to pull everybody together and get some ideas in a room that  
10 would help the whole ball move along.  
11

12  
13 Becky Wagner,

14 I would share the opinion that everyone is doing their own thing and trying to be the best  
15 advocate they can be for those whom they represent, but this is a universal issue. And if  
16 I'm going to have to compete with first-time buyers and seniors who are going on  
17 reduced income and my folks don't even have jobs, there is no way we can do anything  
18 but work in our silos until one of us wins and everybody loses.  
19

20 Council President Leventhal,  
21 Ms. Praisner?

22  
23 Councilmember Praisner,

24 I'd like you all, before the Committee has a chance -- the PHED Committee as opposed  
25 to this Committee or task force or commission -- has the chance to think about this  
26 issue, to get back to us with the thoughts about how you respond to the issues, as I  
27 think Norm did, from a standpoint of more direction and more outcome kinds of pieces,  
28 but also I am not surprised to see all of you here. You are the usual suspects one might  
29 round up when you are talking about housing. But it would seem to me to respond to the  
30 wisdom of the crowds, this crowd gets together all the time at different events and at  
31 different occasions under different issues and perspectives. What I'm actually interested  
32 in is broadening the crowd; not having you continue to talk to each other with our  
33 imprint. You don't need us to talk to each other. What I'm interested in is ways in which  
34 you broaden the crowd beyond those who have no understanding or limited  
35 understanding of the issues and might bring a perspective different from the ones you  
36 normally travel in. So if you have any thoughts about that and would like to e-mail me, I  
37 would be very happy to see them. Thank you.  
38

39 Council President Leventhal,

40 All right. Thank you all very much for your testimony. Agenda Item 14 is a public hearing  
41 on Bill 28-06, Procurement - Health Insurance preference, which would require the  
42 Director of Procurement to adopt certain preferences for certain contractors and





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1 potential contractors who offer an adequate level of health insurance coverage to their  
2 employees, authorize the Director of Procurement to require certain bidders and  
3 offerers to submit certain information regarding employee health insurance, require the  
4 Chief Administrative Officer to perform certain audits to measure compliance with  
5 certain wage requirements, and generally amend County procurement law. A  
6 Management and Fiscal Policy Committee work session will be scheduled at a later  
7 date. Anyone who wants to submit additional information for the Council to consider  
8 should do so by the close of business August 1st. There are no witnesses for Agenda  
9 Item 14. Agenda Item 15 is a public hearing on Expedited Bill 33-06, Property Tax, Tax  
10 Credit, Nonprofit Swim Clubs, which would provide a property tax credit for certain  
11 nonprofit swim clubs and generally amend County law regarding property tax credits. A  
12 Management and Fiscal Policy Committee work session is tentatively scheduled for July  
13 17th. Anyone who wishes to submit additional information for the Council to consider  
14 should do so by the close of business July 12th. We have two witnesses; Pat O'Conner  
15 and Jordan Fainberg. Before beginning your presentation, please press the button in  
16 front of your microphone and state your name for the record.

17  
18 Pat O'Conner,

19 Good afternoon, Mr. Chairman, members of the Council, I'm Pat O'Conner.

20  
21 Council President Leventhal,

22 I think it is not on. Press it down. Now it's on.

23  
24 Pat O'Conner,

25 Good afternoon again.

26  
27 Council President Leventhal,

28 Good afternoon to you.

29  
30 Pat O'Conner,

31 I am Pat O'Conner, I represent Regency Estates Swim Club, but I think I also represent  
32 many of the community pools in Montgomery County. I've been asked to speak before  
33 you today as a representative of those pools. We're here to talk about property taxes  
34 and the impact on community pools throughout the County. A couple of months ago,  
35 Governor Ehrlich signed a bill that enables the Council to grant credits for property  
36 taxes imposed on nonprofit swim clubs that use their facilities exclusively as a  
37 recreational outlet for the communities. In response to that enabling legislation,  
38 members of the Council have introduced Expedited Bill 33-06, which when passed, will  
39 provide that tax relief. We'd like to acknowledge and thank the Councilmembers who  
40 have cosponsored the bill and have been instrumental in shepherding it in an expedited  
41 manner to this point. The state to permit the assessments, a devastating impact on  
42 neighborhood community pools throughout the County. They have seen property value



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1 quadruple over a three-year period. The impact of an apparent shift in policy and  
2 procedure by the State Department assessment in taxation is having a dramatic and  
3 devastating impact on our neighborhood community pools throughout the County. Some  
4 pools have seen property value of their respective facilities quadruple over a three-year  
5 period. For example, the 2006 assessment on the Robin Hood Pool in Silver Spring  
6 increased 299% in 2006 over 2005. Kenmont Pool in Kensington has seen their  
7 assessment jump from 120,000 to \$1.2 million in a couple of years. And the tax bill  
8 increases accordingly. A community pool relies on funds collected from the community  
9 members in the form of annual dues and fund-raising. The monies are used for the  
10 annual operations, hopefully preventive but usually emergency repairs, and  
11 maintenance. A skimmer, for example -- the hole in the side of the pool where the water  
12 goes in and cleans up the water -- generally costs about \$1,000 to replace. There are  
13 usually ten to 15 of these skimmers in one pool. What is the extraordinary increase in  
14 property tax bills mean to some pools? It means the maintenance and repair schedule  
15 will not be followed. It means duct tape and bailing wire and a prayer that they can stay  
16 open for one more year. When property taxes account for 10%, upwards of 20% for  
17 some pools, more of an operating budget, with only a promise to get larger, the future is  
18 bleak for the survival of our community pools. And in closing, I would like to address the  
19 scope of the adverse impact County property taxes, if not abated, will have on the  
20 County. During the consideration of the bills that work their way through the State  
21 Assembly, a request was made to Montgomery County for an assessment of the  
22 financial impact of this enabling legislation. The response from the County was the that  
23 impact would be nil, as there were no pools within Montgomery County that would  
24 qualify for the credits. Since that time, we have identified almost 50 nonprofit community  
25 pools currently operated in Montgomery County. The memberships of these pools range  
26 from 200 to 600 respectively. That translates roughly into about 15,000 adult  
27 constituents and somewhere between 45,000 to 60,000 kids. With all due respect to the  
28 Council, I would not want to be the bearer of the bad news the pools may not open next  
29 year because they can't pay the property taxes, especially with election coming up in  
30 the fall. I'd like to recognize I have about five or six presidents from many of the  
31 community pools around, and Jordan Fainberg will take over and address the other  
32 points. Thank you.

33  
34 Councilmember Praisner,  
35 Before he does, Jane Kregan wanted to testify, as well. Is Jane here?

36  
37 Jane Kregan,  
38 Yes.

39  
40 Councilmember Praisner,  
41 If you could join us at the table and be the third speaker.



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1 Council President Leventhal,  
2 Okay, Mr. Fainberg.

3  
4 Jordan Fainberg,

5 Thank you. My name is Jordan Fainberg. I am President -- the volunteer President I  
6 should say -- of Country Glen Swim Club in Potomac. Country Glen is a community  
7 swim club located next to Wayside Elementary on Glen road. Our pool has been a huge  
8 part of a community traditions for over 30 years; however, like most nonprofit pools,  
9 we're struggling financially. Our property tax liability has gone from about \$6,000 three  
10 years ago to over \$15,000 last year. This represents almost 12% of our operating  
11 budget. In the past three years, Country Glen has had to deal with many financial  
12 challenges, including the doubling of insurance, major increases in utilities, and an  
13 aging facility. These issues are compound by the inability to raise dues proportionally.  
14 There are over 50 nonprofit community swim clubs operating in Montgomery County,  
15 providing a major source of recreation to thousands of families. While Montgomery  
16 County has built some incredible swimming facilities, the community swim clubs are a  
17 very important part of neighborhoods. Most clubs have between 300 and 400 families  
18 and are located within the residential part of the neighborhood. Every day in the  
19 summer, you'll see kids walking to their pool. We are fixtures within the communities.  
20 Kids grow up with the goal of becoming lifeguard. Swim team records are proudly  
21 displayed. At Country Glen, we even grant Wayside Elementary School a no-cost lease  
22 to use our parking lot for parents, teachers, and buses. Just drive down Glen Road in  
23 the morning and see what the traffic is like there. The increased cost, specifically the tax  
24 burden, can and will drive our nonprofit swim clubs out of business. In a recent meeting  
25 of presidents, many pools lamented the fact that they were one major repair away from  
26 closing and becoming another Starbucks. While we all enjoy a nice cup of coffee, this is  
27 not the kind of development that Montgomery County wants, and the tax relief will be  
28 less expensive than replacing and building new pools to serve the communities.  
29 Passing this legislation is vital to keeping our pools open, giving our residents a  
30 wholesome recreational activity, preserving green space, and it's just the right thing to  
31 do.

32  
33 Council President Leventhal,  
34 Okay, Ms. Kregan? Please go ahead.

35  
36 Jane Kregan,

37 Thank you. Good afternoon, Mr. Leventhal and members of the County Council. My  
38 name is Jane Kregan and I am the President of the Oakview Pool, located in the  
39 Oakview community in Silver Spring. Like everyone else here, our pool has been open  
40 for close to 50 years. It's been a fixture in the community and not only has it provided  
41 swim lessons and a myriad of other activities, it also had a connection with the former  
42 Brookview School, where it provided swim lessons and use of the pool to the



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1 elementary school students before the school year ended. We are excited about the  
2 opportunity to have a collaboration again with the new Roscoe Nix Elementary School  
3 that will open next month for the 2006 / 2007 school year. In the past couple of years,  
4 we've had to totally redo our pool to the tune of almost \$100,000. And a lot of that was  
5 taken on by the former President of the previous board, who took out a personal loan  
6 essentially for that money because we did not want to see the pool go under. So I echo  
7 the sentiments of everyone here. This bill would really go a long way toward easing the  
8 burden for us and all of the other County pools that have existed for so many years. Our  
9 pool has a swim team and we hope to give our children the same important community  
10 activity that they have had for the past 50 years. So we urge and very much support the  
11 passage of this bill.

12  
13 Council President Leventhal,  
14 Thank you very much. Vice President Praisner.

15  
16 Councilmember Praisner,

17 Well, as the former member of Calverton Swim Club and grandmother of some  
18 swimmers now, I very much appreciate and identify with the issues, but there are some  
19 questions that have come up as I've tried to respond to all the e-mails. I'm anxious to  
20 have the County Executive and the Department of Finance and at work session on July  
21 17th. There are a couple issues that we need to make sure we are clear about. I got  
22 some e-mails because the list of pools attached to the bill when introduced, I believe  
23 come from the state Department of the Assessment. Not every pool that believes it is  
24 eligible or fits the criteria is listed and it has raised some concerns about that. And as  
25 with other issues where we've found that the classification or characterization of  
26 properties is complicated, some of the information that the Finance Department gets  
27 from SDAT and other places, it will be important for us to know both the fiscal impact,  
28 which obviously there is some, but more importantly, how we make sure that there isn't  
29 a situation where all of a sudden, after we pass this legislation -- and we will pass it, five  
30 people support it. It's only a question of when it goes into effect, unless the Executive  
31 chooses to veto it. Five Councilmembers is a majority of the Council. The expedited  
32 deals with the [sect] issue and the override issue. I don't want anybody who believes  
33 they're covered to all of a sudden get a bill because something in the way the tax roles  
34 classify a swim club means they're not on this list, and there are a couple I know of that  
35 are not on this list that we need to check through, Mike, please. The second is I've  
36 heard folks raise questions about the nonprofit / not-for-profit characterization and you  
37 and I have had some conversations about that, Mike. But I want to be clear that the  
38 characterization of the swim clubs' nonprofit versus not-for-profit and how that is defined  
39 since it was used in state law, is clear. Thirdly, the state law says that it is imposed on  
40 the swim club or eligible for a swim club use, and I quote, "exclusively for certain  
41 activities." And I want to make sure that we are clear as to what the categorization of  
42 activities are. Can you lease your pool out for something and still fall in that category?



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1  
2 Jordan Fainberg,  
3 I believe it says recreational.

4  
5 Councilmember Praisner,  
6 Well, but that's not clear. And the question is what the guidelines are. I don't want  
7 anybody thinking they can do something and continue to do something where they may  
8 lose the status of the eligibility. All of those things I think need to be clear. And then  
9 what I would anticipate we would do is have some document, agreed on by the  
10 department, et cetera, that would be communicated to folks so that we know how it  
11 works. Because as I said, we've had problems in the past. So if we can work through  
12 those issues, it would be, I think, very helpful. And of course, the Committee meetings  
13 are open meetings and if anyone is interested in joining us again on the 17th, that would  
14 be fine too.

15  
16 Ralph Wilson,  
17 What time is that?

18  
19 Councilmember Praisner,  
20 It is scheduled for the 17th, it doesn't say what time. I would check the Council's  
21 website.

22  
23 Councilmember Perez,  
24 I think it's 9:30.

25  
26 Councilmember Praisner,  
27 No, it can't be.

28  
29 Councilmember Perez,  
30 Two o'clock.

31  
32 Councilmember Praisner,  
33 Two o'clock? 17th, the Committee?

34  
35 Council President Leventhal,  
36 Two o'clock.

37  
38 Councilmember Praisner,  
39 I don't know if it's the first item on the agenda...it's not?

40  
41 Councilmember Perez,  
42 Third.



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1  
2 Councilmember Praisner,  
3 Third. So I think if you get there by 2:30, quarter of three, you should be okay. Thank  
4 you very much.

5  
6 Council President Leventhal,  
7 Thank you all very much for expressing your views on this bill, which is already  
8 supported by a majority of the Council. Agenda Item 16; this is a public hearing on  
9 Special Appropriation to the FY '07 operating budget of the Montgomery County Fire  
10 and Rescue Service for the Apparatus Management Plan in the amount of \$2,590,000.  
11 There are no witnesses, action is scheduled right now. Those in favor -- does Mr. Knapp  
12 want to speak to this before we vote? Mr. Knapp, any comments? No comments. Okay,  
13 those in favor of the apparatus -- Ms. Praisner?

14  
15 Councilmember Praisner,  
16 I just have a comment. Again I want to thank Minna for making the point about the fire  
17 tax issue. I think whenever we're talking about source of funding and we're talking about  
18 a subset of the property tax and/or we're talking about a dedicated fund, either one of  
19 those, we need to get the fund balance implications as part of the Executive's  
20 submission or the Council's creation, whichever it might be.

21  
22 Council President Leventhal,  
23 Okay, the vote is on the Special Appropriation to the Fire and Rescue Service for the  
24 Apparatus Management Plan. Those in favor of the Special Appropriation will signify by  
25 raising their hands. It is unanimous -- Mr. Perez, in the back of the room. It is  
26 unanimous. Okay, and that concludes the public hearing. We had earlier suggested that  
27 we would act today on ZTA 06-08, Accessory Buildings. That matter will be taken up  
28 next week on July 18th. So the Council now turns to District Council Session. And we  
29 are going to have a work session on Zoning Text Amendment 05-16 on Workforce  
30 Housing. We're going to have a work session on the ZTA. We're then going to have --  
31 what's that?

32  
33 Councilmember Silverman,  
34 We were going to vote on all this today.

35  
36 Council President Leventhal,  
37 We have never had a work session on the ZTA, so I am informed by staff, so we need  
38 to have at least -- If it's not necessary, then we don't need any discussion of it but...

39  
40 Councilmember Silverman,  
41 I'm sorry, Mr. President, I had understood that we would deal with both today and we  
42 would vote on both today.





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1  
2 Council President Leventhal,  
3 We are going to vote today.

4  
5 Councilmember Silverman,  
6 Okay.

7  
8 Council President Leventhal,  
9 We are going to vote. I am only repeating what I was told by staff. We have not had  
10 discussion of the ZTA. We have had discussion of the bill, so we were going to have  
11 discussion of the ZTA followed by a vote, followed by any further discussion and a vote  
12 on the bill. After we vote on the bill, we would vote on the ZTA. That is what is going to  
13 happen today. But first we are going to talk about the ZTA, which we have not done  
14 thus far. And so Chairman Silverman?

15  
16 Councilmember Silverman,  
17 Thank you, Mr. President. Okay. Let's make sure we are working off the right packet.  
18 This is the Agenda Item 17 for today. Is that correct, gentlemen?

19  
20 Councilmember Floreen,  
21 Correct.

22  
23 Councilmember Silverman,  
24 We have not discussed the language of the ZTA, Mr. Knapp. So that is apparently what  
25 we are going to do. The Committee recommends unanimously that the ZTA be  
26 approved with revisions. There are staff recommended revisions and the Committee  
27 agreed to apply the same MPD Flexible Development Standards to Workforce Housing.  
28 Ms. Praisner dissented in two instances, which we'll get to. The Committee-  
29 recommended revisions are identified below. Let's start with eligibility requirements.  
30 This Zoning Text Amendment indicates that a subdivision first of all has to have 35 or  
31 more market dwelling units. It is restricted to zones which have a maximum permitted  
32 residential density at or above 40 dwelling units per acre and they have to be in a Metro  
33 Station Policy area. So as we've talked about in previous sessions, this is a bill that has  
34 limited application within the County. The subdivision has to include an amount of  
35 Workforce Housing Units that is not less than 10% of the number of proposed market  
36 dwelling units, not including any MPDUs or bonus density units or other dwelling units  
37 excluded under Chapter 25-B. In English, if I understand what this means in English, is  
38 that it's 10% of the market units. So if you've got MPDUs, it is not 10% of the MPDUs  
39 and the market rates. It is just 10% of the market rate units. And the number of  
40 Workforce Housing Units that have to be provided is based solely on those market rate  
41 units and doesn't include any density bonus provisions. And those are the provisions





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1 that we redrafted. If people want to, they can look it Circles 42 through 51 and see  
2 where -- these aren't in color, though.

3  
4 Ralph Wilson,  
5 Well, the first packet we distributed did have color maps.

6  
7 Councilmember Silverman,  
8 Okay, if somebody wants to look, that is where the affected zones are.

9  
10 Ralph Wilson,  
11 They were difficult to reproduce each time.

12  
13 Councilmember Silverman,  
14 Right. I'm going to sort of keep going through this until people have questions or  
15 comments. And Mr. President, if they have comments overall...

16  
17 Council President Leventhal,  
18 I will let you know if people have questions.

19  
20 Councilmember Silverman,  
21 Okay. Second issue is Master Plan or Sector Plan limits. The Committee revisions  
22 include indications that any building height or residential density limit established in the  
23 Master Plan or Sector Plan may be exceeded to the extent required for the number of  
24 Workforce Housing Units that are constructed, but not more than the maximum building  
25 height of the zone, and not more than 10% above the residential density limit of the  
26 applicable zone. What this basically means is you could have a situation where, as we  
27 did with the MPDUs, where you have a Master Plan that has a height limit of let's say 90  
28 feet, the zone may provide the ability for 143 feet. This simply says you can exceed the  
29 height of the Master Plan in order to accommodate the Workforce Housing Units, but  
30 you can't exceed the height of the zone. So if you have a situation where somebody has  
31 a building, for example, in downtown Silver Spring which is 200 feet high and that is the  
32 maximum permitted in the zone, they would not be able to go to 215 feet. They would  
33 be still capped out at 200. The development limits in Overlay Zones control and Ms.  
34 Praisner had proposed an amendment which the Committee, I don't think, took up.

35  
36 Ralph Wilson,  
37 I think it's on Circle 19.

38  
39 Councilmember Silverman,  
40 Right, which we will get to at the appropriate time.

41  
42 Ralph Wilson,



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1 Yeah, the Committee didn't address it, but it's in the packet.

2  
3 Councilmember Silverman,

4 Right, which would not allow an increase above the Master or Sector Plan limits  
5 established residential density or height limit on property that adjoins or is adjacent to  
6 one-family residential development and Master Plans that contain height restrictions are  
7 contained on Circle 34 of today's packet. I will just go through the rest of these and then  
8 maybe we can just circle back there, if that's all right.

9  
10 Councilmember Praisner,  
11 That's fine.

12  
13 Councilmember Silverman,

14 Multifamily zone green area standard, special regulations for MPDUs permit the normal  
15 green area minimum requirement to be reduced to 35%. The Committee recommended  
16 the same reduced standard apply to Workforce Housing. Ms. Praisner -- I can't  
17 remember, Marilyn. I'm reading what it says, "Has questioned the rationale for trade-off  
18 in green space for MPDUs and Workforce Housing." Was that...

19  
20 Councilmember Praisner,

21 Yeah, it was basically a concern that I -- well, the comment related more to I think we  
22 need to look at whole issue of trade-offs on green space where we are talking about  
23 putting additional units. And I'm not opposed to flexibility on the use the that green  
24 space, but I think we are giving folks in -- we're saying where moderate priced dwelling  
25 units exist and where Workforce dwelling units exist, we are going to have less green  
26 space. And I think that seems, as a philosophy, something I have a problem with. So  
27 what I was suggesting is I guess if we -- I would rather not reduce it, but if the Council  
28 doesn't feel we've had the kind of conversation we need to on this issue, then I would  
29 request a separate discussion on green space issues, just as I think we have to have a  
30 discussion about the waivers we've granted for parking in certain situations where at  
31 least now, I know of and I know Mr. Knapp does, too, of a number of occasions where  
32 senior housing is causing significant parking problems because of the waiver and there  
33 is inadequate parking and those are some of the people I don't want having to forage for  
34 parking and walk further because of it. So I think that is a policy issue that we have to  
35 look at, if not within this document, separately.

36  
37 Councilmember Silverman,

38 Okay, we can circle back and see where folks are on amendments. PD Zone Green  
39 Area Standard Committee agreed that the Green Space Standard of the PD Zone  
40 should be reduced to provide greater development flexibility in achieving Workforce  
41 Housing in the PD Zones. Again, we had disagreement here. Ms. Praisner believes  
42 reduced green area should be provided off-site. The ZTA does not provide for that.



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1 RMX Zone. The Planning Board calculated that under an RMX Zone in a commercial  
2 area, you could have 48.8 dwelling units per acre, so the Committee modified the  
3 legislation to include the RMX Zone. The only eligible RMX Zone is located in the  
4 Glenmont Metro Station Policy Area. The zones that meet the Workforce Housing  
5 criteria are on pages 23-32. The TOMX II Zone -- the ZTA as introduced did not permit  
6 an increase in the density or building height established in the TOMX II Zone or in a  
7 Master Plan or Sector Plan to accommodate construction of Workforce Housing. This  
8 restriction was to accommodate Workforce Housing decisions that we had made in  
9 Shady Grove and to ensure there was no ability to increase what had been reviewed in  
10 Shady Grove Master Plan. What we did, if everybody recalls in Shady Grove, is we  
11 built-in in the Master Plan a Workforce Housing requirement within the caps that are  
12 provided so that if we, in effect, made this apply to Shady Grove, then we would be  
13 busting the number of units we all agreed would be a hard cap in Shady Grove. So the  
14 Committee adjusted the language of the TOMX II Zone to establish the same standard  
15 for as established for other zones where Workforce Housing is required. Two other  
16 pieces, the applicability, the grandfather provision, the Committee agreed unanimously  
17 that it should be broad enough to include pending zoning applications, development  
18 plans, project plans, preliminary subdivision plans and site plans. This is a new program  
19 and we were very cognizant of the fact that there are a variety of folks in a variety of  
20 places in the process and wanted to make sure it was prospective, and because of the  
21 need for implementing regulations, the effective date of the ZTA and the bill would be  
22 established at December 1, 2006. That is where we are, Mr. President.

23  
24 Council President Leventhal,  
25 Thank you very much. Ms. Floreen?

26  
27 Councilmember Floreen,  
28 Thank you. I just wanted to comment a tad on the overall contours of the ZTA. I am not  
29 sure if Mr. Silverman mentioned this, but this was basically predicated on the work that  
30 we'd done previously on the MPDUs. And the challenge, particularly with the points Ms.  
31 Praisner raises, the green space issue and the like, is the objective of creating sufficient  
32 flexibility so that on the a side-by-side basis, the Planning Board can weigh height  
33 versus green space versus what ever, if it appears to be a legitimate problem. So the  
34 issue for all of this is how can we add this additional, as I view it, service in the name of  
35 housing that average families can afford in a metro area while still respecting all the  
36 master plan objectives and all the other terms and conditions of development within a  
37 discretionary environment. And again it is an effort to add additional tools, not to  
38 necessarily resolve them one way or the other, but to make sure there is some flexibility  
39 built into the review process that allows these projects to go forward. As some may  
40 recall from the conversations we have had on the actual bill and the testimony we have  
41 heard from different interested parties, there is a range of opinion as to how doable this  
42 is in the first place. And I think if we really want to make it possible, we need to continue



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1 to respect the challenge of how hard it is to actually get stuff approved and financed  
2 within the County. That is why it is written the way it is, to allow some additional  
3 flexibility.

4  
5 Council President Leventhal,  
6 Mr. Perez.

7  
8 Councilmember Perez,  
9 Ms. Floreen, at what point -- we talked about the issue...

10  
11 Councilmember Floreen,  
12 That's the bill part.

13  
14 Councilmember Perez,  
15 Okay, so we'll wait for the bill part. Okay. No problem.

16  
17 Council President Leventhal,  
18 Okay. There are no further comments or questions. Ms. Praisner?

19  
20 Councilmember Praisner,  
21 Well, I don't know whether you want to look at amendments now, or when we go to the  
22 final...

23  
24 Council President Leventhal,  
25 Why don't we get to those [INAUDIBLE] after we pass the bill.

26  
27 Councilmember Perez,  
28 I thought we were on the ZTA.

29  
30 Councilmember Praisner,  
31 We are on the ZTA but we are doing a work session on the ZTA. I wanted to say  
32 something a little more about green area and trade-offs because we did some creative  
33 things in the Woodmont Triangle area that allowed common space to be collectively  
34 placed, not necessarily with the project, including arts, et cetera. And I guess again from  
35 an advocacy perspective, it troubles me that some of the more fundamental issues are  
36 being traded off or suggested to be eliminated or could be eliminated. I think we need to  
37 look at language or some challenge to folks to try to find a way to respond to this issue.  
38 Ralph, I don't -- is the language for my amendment in the packet?

39  
40 Ralph Wilson,  
41 It's on Circle 19.



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1 Councilmember Praisner,  
2 I don't see it. Well, explain to me how what's on Circle 19 does what I have requested.

3  
4 Ralph Wilson,  
5 It prevents the Planning Board from allowing any increase above any of the Master  
6 Plan-established height or density limits.

7  
8 Councilmember Praisner,  
9 Yeah, but when I talked about it, what I proposed is not allowing it where it adjoins or is  
10 adjacent to single-family residential development. This is a blanket prohibition.

11  
12 Ralph Wilson,  
13 No, it says on property that adjoins or is adjacent to...

14  
15 Councilmember Praisner,  
16 Where?

17  
18 Ralph Wilson,  
19 19-B.

20  
21 Councilmember Praisner,  
22 Oh, I'm sorry, I'm looking at 19. Okay, 19-B. Fine. Thank you.

23  
24 Ralph Wilson,  
25 We wanted to be sure that one-family residential covered townhouses and it does under  
26 the definition in the zoning ordinance.

27  
28 Council President Leventhal,  
29 So is that everything then on the ZTA, Mr. Chairman?

30  
31 Councilmember Silverman,  
32 It appears that way.

33  
34 Council President Leventhal,  
35 Okay, so let's take up the bill. We've already had extensive discussion. I don't know, Mr.  
36 Chairman, whether you want to make further remarks or whether we should just go to  
37 amendments.

38  
39 Councilmember Silverman,  
40 I think we have had extensive discussion and questions and comments. If people have  
41 more questions or comments or amendments, it would be appropriate to take it up in  
42 that context.



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1  
2 Council President Leventhal,  
3 Okay, Ms. Floreen.

4  
5 Councilmember Floreen,  
6 Thank you, Mr. President. I wanted to go back to the question of the affordable housing  
7 tax credit program. HOC has advocated that we exempt such projects from this  
8 requirement. I supported that in Committee and I would like to renew that view here and  
9 offer it as an amendment. I am not sure where I would do that, Ralph? Or Mr. Faden?

10  
11 Mike Faden,  
12 You would do it at the top of a Circle 5 of the bill. We would basically rewrite this  
13 paragraph slightly, which we understand the intent of.

14  
15 Councilmember Floreen,  
16 To exempt projects that utilized housing tax credits?

17  
18 Mike Faden,  
19 Right.

20  
21 Councilmember Floreen,  
22 So that would be my motion.

23  
24 Mike Faden,  
25 Exempt the entire project if they have the required number of tax credit units, I think, is  
26 your intent.

27  
28 Councilmember Floreen,  
29 As you may recall from our conversation last time, we're talking, these projects more  
30 than likely would satisfy the Workforce Housing obligation, but there might be cases in  
31 which they may not. And the challenge is that we're serving a population that is  
32 significantly below that, otherwise supported by the MPDU program. Isn't that correct,  
33 Mr. Minton?

34  
35 Scott Minton,  
36 That is correct.

37  
38 Councilmember Floreen,  
39 That financial challenge, I think, is sufficient justification for allowing those projects to  
40 proceed without this additional obligation. So that would be my motion.

41  
42 Councilmember Perez,





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1 Second.

2  
3 Council President Leventhal,  
4 The motion has been made by Ms. Floreen and seconded by Mr. Perez. Ms. Floreen,  
5 are you still speaking?

6  
7 Councilmember Floreen,  
8 No, that's it.

9  
10 Council President Leventhal,  
11 Mr. Perez?

12  
13 Councilmember Perez,  
14 I second the motion. That was one of my first questions I asked as we talked about the  
15 Workforce Housing debate was whether we would have the unintended consequence  
16 as we move forward on one piece of legislation of inadvertently making another leg of  
17 the affordable housing stool slightly more rickety. And I believe that this amendment will  
18 ensure that as we move forward in the Workforce Housing front, in context of these  
19 projects, we are not creating that dynamic. I've certainly learned over the last four years  
20 how complicated many of these tax credit projects can be. And I think this is a sensible  
21 solution that will enable something that is already complex not to become even more  
22 complex or fatally complex, which I am confident would not be an outcome any of us  
23 would desire.

24  
25 Council President Leventhal,  
26 Do we have a written amendment? Do we have the actual words?

27  
28 Councilmember Floreen,  
29 No, we don't.

30  
31 Councilmember Silverman,  
32 Never stopped us before.

33  
34 Council President Leventhal,  
35 All right, so we are basically just exempting those projects that rely upon low income  
36 housing tax credits?

37  
38 Mike Faden,  
39 That's right. The key difference between Ms. Floreen's amendment and the bill as it is is  
40 the bill exempts tax credit units, but the tax credit units may not be the same number.  
41 May be a lower number than the Workforce Housing plus MPDUs, and in that case,  
42 there would still be some Workforce Housing units required. Her amendment would



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1 change that to say that if the number of tax credit units are sufficient to count the project  
2 under federal rules as a tax credit project, then the Workforce Housing units are  
3 required.

4  
5 Council President Leventhal,

6 Okay. Is there further discussion on the amendment? Those in favor of the amendment  
7 will signify by raising their hands. The amendment carries unanimously. Are there  
8 additional amendments? We are on the bill, not the ZTA. Ms. Praisner.

9  
10 Councilmember Praisner,

11 I guess I'm trying to work through these. On the bill, we talked about a sunset. Is that  
12 written in or is that an issue we have to consider?

13  
14 Mike Faden,

15 That is an issue in the memo that you should consider when you get to it.

16  
17 Council President Leventhal,

18 Well, we're on it now.

19  
20 Councilmember Praisner,

21 The Committee discussed it...

22  
23 Councilmember Silverman,

24 If I may, just to make sure we are where we are.

25  
26 Mike Faden,

27 Page eight of the memo.

28  
29 Councilmember Praisner,

30 Issue number 17.

31  
32 Council President Leventhal,

33 Sunset provision. We are on an agenda item number 18. And a proposed suggestion  
34 from staff, is language at the bottom of page eight.

35  
36 Mike Faden,

37 If you want a sunset rather than simply a program review, this language -- our  
38 suggestion is to have them do it.

39  
40 Councilmember Praisner,

41 Right, and we had talked about it in Committee and just asked you to bring it, so I am  
42 comfortable with what you are proposing. It is consistent with what we did with PLQ and



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1 it will allow us the capacity to do personal living quarters and will allow us to do the kind  
2 of review, given the new program, that I think would be very helpful, especially since  
3 there are elements within that different folks have raised issues about. So the  
4 Committee recommended doing that. I am not sure where we are. We didn't have any  
5 language.

6  
7 Council President Leventhal,  
8 It appears that it requires a motion.

9  
10 Councilmember Praisner,  
11 I will make the motion.

12  
13 Council President Leventhal,  
14 And I will second. Ms. Praisner has made the motion to adopt a December 1, 2012  
15 sunset and I have seconded. Discussion on the motion. Ms. Floreen.

16  
17 Councilmember Floreen,  
18 Thank you. I respect the objective of looking at this, but if we use this language, we're  
19 sending the message of significant uncertainty for anything that is occurring up until that  
20 period. You could get a local map amendment approved now and not have it actually  
21 gone to preliminary plan for a number of years. If we are going to -- if it is suggested we  
22 are going to change the law, that could really alter planning on every score. If the object  
23 -- the issue is -- this is applying across the board to every project, it's not just a unique  
24 individualized situation such as the PLQs, if the object is to review the bidding and sort  
25 of get an update on how things are working, and is this an appropriate effort, what are  
26 the challenges and the like, perhaps we could use some additional different kinds of  
27 language that would make that clear. Otherwise, as written, this say it doesn't operate,  
28 period, for anything after that time. Admittedly it is a few years off, but I am concerned  
29 about the change in expectations and the altered obligations that this might suggest and  
30 the uncertainty it might require. If we were to say something like Article 5 shall be  
31 reviewed in full as of December 2010 even or pick another date, that would allow us to  
32 give notice to all the world that this issue is going to be continued to be reviewed and  
33 monitored.

34  
35 Council President Leventhal,  
36 Is that all, Ms. Floreen?

37  
38 Councilmember Floreen,  
39 Well, that is my suggestion.

40  
41 Council President Leventhal,  
42 There's other Councilmembers that wish to speak to the amendment.



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1  
2 Councilmember Floreen,  
3 I think there is a significant concern. I would be interested in the sponsor's reaction.

4  
5 Council President Leventhal,  
6 Are you yielding, Ms. Floreen?

7  
8 Councilmember Floreen,  
9 Yeah.

10  
11 Council President Leventhal,  
12 Okay, Mr. Silverman followed by Mr. Perez.

13  
14 Councilmember Silverman,  
15 Thanks. Let's get a little reality check here from folks who are actually involved.

16  
17 Councilmember Perez,  
18 We did that a year ago.

19  
20 Councilmember Silverman,  
21 Oh, yeah, that's right, that's what we're doing here. Here is my math. If there's going to  
22 be a target date of 2012 for potential expiration, then that means the next Council is  
23 going to have to take this up. And then the question is when do they take it up? You  
24 may not even have any projects that are forthcoming before you're already taking it up.  
25 Or if you decide -- I can say this not being here, I will not be here at this table -- those of  
26 you who will be might end up taking this up in 2010, which is four years from now. So  
27 the suggestion, I guess, is I am not adverse to a sunset. The question is when do  
28 people want to take it up. And I think 2012 might actually be too soon. I would suggest  
29 2014.

30  
31 Councilmember Floreen,  
32 That's fine.

33  
34 Council President Leventhal,  
35 Okay, the maker and seconder of the amendment are amenable to changing the date to  
36 2014. Do you yield, Mr. Silverman?

37  
38 Councilmember Silverman,  
39 Yes, I'm sorry.

40  
41 Council President Leventhal,  
42 I don't want to interrupt anyone, I just want to know if other Councilmembers...



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1  
2 Councilmember Silverman,  
3 Mr. Subin was trying to calculate which term it will be for him.

4  
5 [LAUGHTER]

6  
7 Council President Leventhal,  
8 Mr. Perez, you have the floor.

9  
10 Councilmember Perez,  
11 Okay, I support this motion and frankly, I think this is -- I continue to be concerned about  
12 the consequences of this bill. The question I still haven't had answered to my  
13 satisfaction is what is going to be the effect of this bill on the production of rental  
14 housing in Montgomery County? I think the honest answer is who knows? That is a  
15 pretty significant question in my mind and I think the burden ought to be on the  
16 proponents of this bill to come back and really show that this is working. That is what  
17 sunsets are about. This is really a conversation about of proof and I think the burden  
18 ought to be on those who support this to show that it actually is working well and it  
19 doesn't have consequences, unintended or otherwise, that are violating the Hippocratic  
20 Oath of policy-making. That is why I think when you are proposing something like this, a  
21 sunset is a very sensible measure. So I strongly support having that in there.

22  
23 Council President Leventhal,  
24 Okay, the vote is on the amendment proposed by Ms. Praisner to sunset this measure  
25 as of December 1, 2015.

26  
27 Councilmember Praisner,  
28 2014.

29  
30 Council President Leventhal,  
31 2014. Yep, 2014.

32  
33 [LAUGHTER]

34  
35 Councilmember Silverman,  
36 You only need one hand. You don't need toes like Mr. Subin.

37  
38 Council President Leventhal,  
39 Those in favor of the amendment will signify by raising their hands. It is unanimous.  
40 Okay, are there additional amendments?

41  
42 Councilmember Silverman,



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1 It looks like there is an Executive Regulation Amendment in terms of the date. This is  
2 page 8 number 16, which is to set the regulations to be transmitted to Council by  
3 October 11 so there will be notice in the September register instead of the August  
4 register.

5  
6 Elizabeth Davison,  
7 We could very much use that because otherwise we'd have to finish these regulations  
8 ten days from now, which is completely impossible.

9  
10 Council President Leventhal,  
11 Okay, it sounds like there's no objection to making that change in date. Are there  
12 additional amendments? Ms. Praisner. Okay, are there additional amendments to the  
13 bill?

14  
15 Mike Faden,  
16 There's one staff amendment if there are no other Committee amendments.

17  
18 Councilmember Silverman,  
19 Where's that?

20  
21 Mike Faden,  
22 That is the equity recapture.

23  
24 Councilmember Silverman,  
25 Oh, yeah.

26  
27 Mike Faden,  
28 A version of it was in the supplementary packet that you received yesterday, but ignore  
29 that. We have a redraft that actually does what we were trying to do. After Linda finishes  
30 distributing it, I think she can better explain it.

31  
32 Council President Leventhal,  
33 Mr. Faden, do you want to explain this amendment?

34  
35 Mike Faden,  
36 Yes, I'm going to call on Linda McMillan. Basically, what this does is the original bill had  
37 a provision to limit resale prices of Workforce housing units during the control period,  
38 which is now 20 years, that based on a similar provision in the MPDU law. After some  
39 thinking and discussion amongst staff with DHCA, HOC, and ourselves, it became  
40 apparent that that wouldn't work very well. So we're suggesting some modifications in it  
41 which Linda will go into detail on.





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1 Linda McMillan,  
2 Workforce Housing is a bit different because there is an intent to return some of the  
3 equity to the seller because of the folks that you're hoping will utilize these units. As so  
4 as DHCA further looked at this, we had some very good discussions because they're  
5 working to get the regulations together, what we concluded was that what you really  
6 need in this instance are two things. You need a provision that allows the setting of the  
7 resale price and you want to keep the resale price affordable to people who are income  
8 eligible for the program. And so the first provision of this amendment would allow the  
9 department to set the resale price. Then there is a return to the seller of money upon  
10 sale. In this case, what we have included based on discussions, is that the seller would  
11 get the actual sales price plus an allowance for closing costs, the fair market value of  
12 capital improvements that the Director finds were needed to maintain the equity of the  
13 unit, and I think that's important because it's not just any capital improvement. It's ones  
14 appropriate to the idea of Workforce Housing. And then a percentage set by regulation  
15 of the equity from the original appraised value to the new appraised value. This was a  
16 discussion we had in Committee and during the Council work session about going from  
17 an appraised value to an appraised value as opposed to being based on the sales price,  
18 as we are in the MPDU program, and then a reasonable sales commission. Depending  
19 upon the scenarios that you put forth, after a ten-year period, you can have situations  
20 where the actual sales price, keeping it affordable to those in the program, is either  
21 enough to cover these costs to the seller or not enough to cover the costs to the seller,  
22 in which case there would be the need for a subsidy that could go from small -- a few  
23 thousand dollars -- to maybe 30 or 40 or \$50,000 ten years out, depending on how you  
24 said the equity recapture and what the gap is between housing appraisal prices and the  
25 growth in income. We think in terms of an amendment, this language achieves what we  
26 wish to achieve in the bill. It does relate to an issue that Ms. Praisner raised about  
27 whether there should be any kind of subsidy of public dollars. The potential for that --  
28 the we don't know that there is an actuality for that -- but the potential for that allowed  
29 within the program and so this does not speak -- this speaks to both the potential for  
30 public subsidy or for a return to the County. It doesn't state one way or the other, but I  
31 think it is important in the scenarios that were given to you in the packet for today that  
32 you did see that depending on how the gap is between growth and incomes and the  
33 growth in appraisal price, there could be the need for a subsidy. You would need to  
34 weigh, in your public policy decision, about whether in the out years paying that subsidy  
35 is worth it to retain an affordable unit in the control period. Once you are outside the  
36 control period, there probably isn't an issue because you would be selling the unit for  
37 the actual market value, which would, we all expect, more than cover any of the costs  
38 associated with it. But the language we think achieves what we're looking for in the  
39 flexibility for the program.

40  
41 Council President Leventhal,  
42 Someone needs to offer this.



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1  
2 Councilmember Silverman,  
3 Looks good to me. I'll move it.

4  
5 Councilmember Subin,  
6 I'll second it.

7  
8 Council President Leventhal,  
9 So Mr. Silverman has moved and Mr. Subin has seconded the amendment  
10 recommended by staff regarding equity recapture. Question from Ms. Praisner.

11  
12 Councilmember Praisner,  
13 I intend to offer a motion that would extend the sale period units from 20 to 30 years to  
14 have comparability with MPDUs. So I wondered from the resale analysis that was done,  
15 what effect do you think it would have on your analysis work and whether this resale  
16 price during control period document should wait to be voted on if you think it has an  
17 effect on the issue of 20 versus 30.

18  
19 Linda McMillan,  
20 I will say this; you can take any of the scenarios and you can go out ten years or 20  
21 years or 30 years, but you are carrying the same assumption all the way out. So to go  
22 past a discussion of what your model shows you, I would say go past ten years  
23 becomes difficult to talk about because, for example...

24  
25 Councilmember Praisner,  
26 Whether it is ten to 20 or ten to 30.

27  
28 Linda McMillan,  
29 Right, if we extend the current scenario of an average of 3% income growth to 9%  
30 appraisal growth, by the time you get to year 20, the appraised value of a Workforce  
31 unit going to be \$2 million. What is the likelihood of that happening? We don't know, but  
32 to carry it beyond ten years I think becomes very problematic. So the difference  
33 between 20 years and 30 years is not really...

34  
35 Councilmember Praisner,  
36 Right, I just wanted to make sure because we're talking about control period. Since we  
37 talked earlier, as I did in the Committee, I believe that for symmetry and for a variety of  
38 other reasons, I'd like to see the control period...

39  
40 Linda McMillan,  
41 I think that from a policy perspective, the issue you are facing is that within the control  
42 period, you are saying there is a value to keeping these units available to people in that



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1 income range, and that you are willing, if necessary, to have a subsidy of dollars go to  
2 that, so it is how long do you want to stay in that control period? That is really the trade-  
3 off.

4  
5 Councilmember Praisner,

6 Well, that isn't the motion in front of us right now, but I wanted to make sure you had the  
7 opportunity to comment on that issue.

8  
9 Elizabeth Davison,

10 I'd just like to impress upon you that the numbers get very large. We just ran a scenario  
11 that has a 3% income growth, a 9% annual appreciation, which what the averages have  
12 been in the past ten years. This is not some fiction; it's the actual last ten years. That  
13 would show that after ten years, the County would have to put about \$58,000 into  
14 repaying the seller. After 20 years, it would be \$316,000. And so if you went out to 30,  
15 you can imagine what that would be. And I have copies of this, if you'd like to...

16  
17 Linda McMillan,

18 And I think that the piece you need to understand from that is that is based on an  
19 assumption that in year ten the appraised value of the unit is going to grow from  
20 \$400,000 to \$900,000 and then in year 20 to over \$2 million. And so actually, if you're  
21 thinking about your tradeoffs then, for what seems like a lot of money, you would be  
22 retaining a unit that in this -- carrying this model out gives you an extraordinarily high  
23 price which probably isn't going to be the case.

24  
25 Councilmember Praisner,

26 Yeah, but that's true if one makes all of these assumptions, and that's the piece of  
27 housing and that one obviously would be evaluating when the bill is sunset.

28  
29 Elizabeth Davison,

30 But I think you have an issue of when people go into making a decision about whether  
31 they want to buy this, I think we have to have a piece of paper that spells out what the  
32 deal is. And we can't then ten years later look at what that results is and say we don't  
33 like that and we're not going to do that.

34  
35 Councilmember Praisner,

36 But if I may comment, part of the problem with the MPDU program was that we didn't  
37 look back at it fast enough to say, "Oops, the ten years is not long enough." And so  
38 therefore -- and we lost a lot of MPDU units in that process.

39  
40 Elizabeth Davison,



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1 The column that shows the subsidy required is Column K, next to the right-hand  
2 column. Obviously it is a big complex chart that's difficult to talk about in a group, but  
3 that's the column that shows the subsidy we'd have to provide to the seller by year.

4  
5 Council President Leventhal,  
6 Ms. Floreen.

7  
8 Councilmember Floreen,  
9 Thank you. Elizabeth, are you saying then based on your current math, assuming the  
10 3%, that we would be looking at a public subsidy of \$58,548 roughly after ten years?  
11 And after 20, under the current proposal, we are looking at 316? Agreeing that this is all  
12 just a guess.

13  
14 Elizabeth Davison,  
15 This particular chart is based on the experience in the Washington metropolitan area  
16 over the last ten years.

17  
18 Councilmember Floreen,  
19 So based on current trends...

20  
21 Elizabeth Davison,  
22 You can say you think they're going to be different, perhaps appreciation won't be as  
23 high as it has been, maybe it'll be higher. But this is just taking current conditions and  
24 projecting it out for 20 years.

25  
26 Councilmember Floreen,  
27 Is this consistent with what the staff has recommended? With the terms that Mr. Faden's  
28 recommended?

29  
30 Elizabeth Davison,  
31 This actually says -- I believe it says they can get -- a seller can get up to 50% of the  
32 total price appreciation. This particular chart shows they get 25%.

33  
34 Linda McMillan,  
35 But "up to" is something that's set by regulations. "Up to" regulation, you could set it at  
36 10%, you could set it at your choice. We did 25% to give you a scenario.

37  
38 Councilmember Floreen,  
39 So this is one scenario. This is a 25% scenario.

40  
41 Elizabeth Davison,  
42 The law allows for up to 50.



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1  
2 Councilmember Floreen,  
3 Staff is assuming it could go up to 50. It could be less than 25.

4  
5 Elizabeth Davison,  
6 But when we sell these units to people, we will have to spell out what they're going to be  
7 getting.

8  
9 Councilmember Floreen,  
10 This will need to be in the regulations as of this fall. This percentage. Is that your  
11 thought?

12  
13 Linda McMillan,  
14 Yes.

15  
16 Elizabeth Davison,  
17 Well, I think that it's possible we could change the regulations over time, but once we  
18 sell the unit, we will have locked into some number.

19  
20 Mike Faden,  
21 Unless you reserve the right to change that in the sale documents.

22  
23 Elizabeth Davison,  
24 And I don't know who would agree to that.

25  
26 Councilmember Floreen,  
27 So we won't know until we've seen a draft of the regulations what that might be. But it  
28 could be -- you're going to have to have some predictability in terms of the criteria. That  
29 will be in regulation.

30  
31 Linda McMillan,  
32 And I do think what's important to understand is the sensitivity to this, just like you talked  
33 about the sensitivity of the pricing models. And if you look at page six and seven of the  
34 memo from today, I've summarized some of the other scenarios that had been run, and  
35 what you'll see is that under the assumptions of the last ten years of 9% growth in  
36 appraised value and a 3% growth in income, in ten years, if you have 25 or 30 or 35%  
37 equity share, there would be a subsidy under any of those scenarios. But if the  
38 assumptions do change over the next ten years and you have a 6% annual growth in  
39 appraised value and 3% annual growth in income, then what you start to see is that if  
40 you set it at 25%, there actually would be return to the Housing Initiative Fund. So the  
41 scenarios are sensitive to what the gap is between the appraisal growth and the income  
42 growth.



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1  
2 Councilmember Floreen,  
3 Okay, so there are a variety of variables, that is the most that can be said.

4  
5 Linda McMillan,  
6 Yes.

7  
8 Councilmember Floreen,  
9 And this is one run. Okay, thanks.

10  
11 Council President Leventhal,  
12 Ms. Praisner.

13  
14 Councilmember Praisner,  
15 I just want to comment I appreciate that folks coming into the program want to know the  
16 parameters in which they're buying a house, just like if I sign up for a mortgage, unless  
17 I've got an adjustable rate, I have a sense of what it might go to, but if I have a fixed  
18 rate, I have some sense. But I have not a clue as to what's going to happen to my  
19 appraisal and nobody guarantees me that my house is going to appreciate at a certain  
20 rate, such that I'm going to get a return. It's a crapshoot for someone who buys a house  
21 who doesn't go to the government, and it's a crapshoot for somebody who goes with the  
22 program. And I think we can make modifications as we go along, depended upon what  
23 the areas are, and not all the houses are going to be built at the same time. Yes, they're  
24 likely to be multifamily, so therefore you get more than four or five units hopefully, but to  
25 some extent the government is making this program available and I think we can look at  
26 the parameters. And nobody guaranteed me that my house was going to be worth  
27 something or the return was going to be there. So to some extent, I think when we look  
28 at the regulations, I'm uncomfortable with suggesting that somebody who gets a  
29 government support program in downtown central business districts, which probably  
30 means that to some extent, they don't need to spend money on cars and other things, is  
31 not getting a good deal by the process, even though some things may be not completely  
32 known at the beginning. I sure as heck didn't know that when I bought my house.

33  
34 Council President Leventhal,  
35 All right. We have before us the amendment on equity recapture. Those in favor of the  
36 amendment will signify by raising their hands. It's unanimous among those present. Are  
37 there additional amendments? And Mr. Perez votes for the equity recapture  
38 amendment, making it unanimous.

39  
40 Councilmember Silverman,  
41 Where is he?  
42





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1 [LAUGHING]

2  
3 Council President Leventhal,  
4 He's out in the hallway.

5  
6 Councilmember Silverman,  
7 The Cheshire Cat. It was his smile.

8  
9 Elizabeth Davison,  
10 I saw him raise his hand.

11  
12 Council President Leventhal,  
13 Ms. Praisner.

14  
15 Councilmember Praisner,  
16 I would like to move that the years in the control period for sale units be 30 years, as  
17 similar to the MPDU program.

18  
19 Councilmember Andrews,  
20 Second.

21  
22 Council President Leventhal,  
23 The motion is made by Ms. Praisner and seconded by Mr. Andrews. Chairman  
24 Silverman.

25  
26 Councilmember Silverman,  
27 Thank you. The bill as introduced had a ten-year period. The Committee amended it to  
28 20; this would take a to 30. I understand it would be comparable to MPDUs, but this is  
29 not a strictly comparable program. Before we vote, I'd like to find out whether folks at  
30 the table have any thoughts about this, either HOC, Park and Planning or DHCA.

31  
32 Elizabeth Davison,  
33 My only comment is since the MPDU law was changed to 30 years, we have had some  
34 units where we haven't been able to find purchasers and the expressed reason is partly  
35 the 30 years. I think with people who are in this income group, they've got more options.  
36 Obviously we'll never know until these are on the market, but my concern is that that's a  
37 very long time period for anybody to stay in one unit, and that it may be a deterrent for  
38 people to sign up for the program.

39  
40 Council President Leventhal,  
41 Of course it is not a requirement that anyone -- just to be clear -- live in the unit for 30  
42 years. It only limits your ability to sell it at a market rate.



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1 Elizabeth Davison,  
2 Right, but that's the same as the MPDU program and that's where we have had  
3 resistance. There are a few projects that we've had where the developers informing us  
4 that people who initially put contracts on the MPDUs had backed out. They'd been  
5 through all of the people on the list and couldn't find a taker.  
6

7  
8 Council President Leventhal,  
9 I heard what you said, but you also commented that 30 years is a long time to live in a  
10 unit. Just to be clear, the effect of Ms. Praisner's amendment does not require anyone  
11 to live in a unit for 30 years, anymore than a 30-year mortgage.  
12

13 [LAUGHTER]  
14

15 Council President Leventhal,  
16 I was joking when I said I've got a 30-year mortgage so I've got to stay for 30 years; I  
17 signed a contract.  
18

19 Scott Minton,  
20 I think the recapture provision may drive this if you look at the cost, the potential cost for  
21 putting back in. I guess the same question applies as did with the MPDUs; does the  
22 period restart anytime the unit's sold within the 30-year period and what will that affect?  
23

24 Councilmember Praisner,  
25 I think the answer is yes.  
26

27 Scott Minton,  
28 But it's hard to tell. It depends on the unit. It depends... Like everything in this program,  
29 it depends on so many different variables. How desirable is the unit? What is the  
30 family's intention? Stay five years and go? Doesn't matter.  
31

32 Council President Leventhal,  
33 Okay, is there further discussion on the amendment? If there is no further discussion,  
34 those in favor of the amendment will signify by raising their hands. It is Mr. Andrews, Mr.  
35 Perez, Ms. Marilyn Praisner and myself. Those opposed to the amendment will signify  
36 by raising their hands. It is Mr. Denis, Ms. Floreen, Mr. Subin, Mr. Silverman, and Mr.  
37 Knapp. The amendment fails 5 to 4. Are there any additional amendments? Ms.  
38 Praisner?  
39

40 Councilmember Praisner,  
41 I'd like to go back to the -- and I don't think we have to have a lot of discussion about  
42 this -- but I have no sense of where folks are. We asked the Planning Board to go back



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1 and look at whether additional density should be -- we asked them for additional  
2 response on that issue. I think it's in the packet, on the fit within rather be in addition to  
3 the base density. And they were supposed to provide us additional material.

4  
5 Multiple Speakers,  
6 [INAUDIBLE]

7  
8 Councilmember Praisner,  
9 Yes, I know, but I wanted to be clear. The Planning Board still believes that the Master  
10 Plan should drive the number of units assumed and the expectations from that  
11 perspective. And I guess I continue to share the Planning Board's view, so I would move  
12 that modification to the legislation.

13  
14 Council President Leventhal,  
15 Ms. Praisner, if you don't mind, just read again your amendment.

16  
17 Councilmember Praisner,  
18 I'm trying to find it in the legislation. If staff could find it, that would be help, too. I'm  
19 trying to find it. I didn't pull that out.

20  
21 Councilmember Silverman,  
22 Where is it?

23  
24 Councilmember Praisner,  
25 I'm trying to find it, I'm sorry. If somebody has another amendment -- I am trying to find  
26 the reference.

27  
28 Councilmember Silverman,  
29 It is not in the bill? It's just in the ZTA.

30  
31 Councilmember Praisner,  
32 Is it only in the ZTA? I thought it was in the bill.

33  
34 Scott Minton,  
35 The bill doesn't control the number of units.

36  
37 Councilmember Praisner,  
38 Okay, so it's the ZTA? All right then, I'll hold it. I'm sorry.

39  
40 Council President Leventhal,



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1 Okay, are there any other amendments to the bill? If there are no other amendments,  
2 are we ready to vote on the bill? Are there comments before we vote on the bill? Mr.  
3 Perez?

4  
5 Councilmember Perez,

6 Thank you, Mr. President. I wanted to thank the members of the Committee for all their  
7 hard work on this bill. I know they spent a lot of time on it and community members  
8 weighed in and we always appreciate that input. I have the same feeling, I'm having a  
9 flashback to the moment in time three years ago or so when Councilmembers  
10 Leventhal, Andrews, and I introduced a bill to limit the buyout provisions in the MPDU  
11 law and there was a lot of e-mail and other chatter that frankly created unrealistic  
12 expectations about what that would do. I was glad we introduced the bill, I'm glad that  
13 the Council ultimately adopted the bill in substantially the same form that was  
14 introduced, but it was important then to temper expectations of people about what the  
15 bill was going to do. It was an important step, but it was a modest step, in terms of  
16 addressing affordable housing challenges. And again, I'm glad we did it, but this is a  
17 similar situation where I think it's important for the public to understand that while this is  
18 an important step, it is also a modest step. And there is going to be -- there was a  
19 misimpression that some had that once we fixed the buyout provisions, that suddenly  
20 we would solve the affordable housing crisis. And we spent so much time on that issue  
21 that sometimes when you spend so much time on an issue, it creates a misimpression  
22 that you've solved the problem. Once again, a lot of time has been spent on this issue  
23 and I don't want to create a misimpression that we have solved a problem. This will be a  
24 modest step in the direction for any one of those households who purchased a home,  
25 it's a critically important step, so it's never appropriate to undermine or understate the  
26 importance for one particular family, but it is important to have broader context when  
27 you're talking about this or any other measure, because I think there's one thing the  
28 Council has learned and I've learned is that there is no one magic fix. We're not going to  
29 make it wake up one day and discover penicillin as it relates to our affordable housing  
30 challenge. We will continue to have a series of modest steps that are going to address  
31 these issues and perhaps we will discover penicillin. I suspect we're far away from that  
32 discovery, but I do think that it's important to temper expectations and ensure that  
33 people don't have the misimpression that we have suddenly solved the Workforce  
34 Housing issue for all of our fire fighters and nurses and schoolteachers and other hard  
35 working residents or would-be residents of Montgomery County. Thank you, Mr.  
36 President.

37  
38 Council President Leventhal,

39 Are there any other comments before we vote on the bill? Ms. Praisner?

40  
41 Councilmember Praisner,

42 Oh, I'm sorry. No.



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1  
2 Council President Leventhal,  
3 Okay, we're ready to vote on Bill 30-05. The clerk will call the role.  
4  
5 Council Clerk,  
6 Mr. Denis?  
7  
8 Councilmember Denis,  
9 Yes.  
10  
11 Council Clerk,  
12 Ms. Floreen?  
13  
14 Councilmember Floreen,  
15 Yes.  
16  
17 Council Clerk,  
18 Mr. Subin?  
19  
20 Councilmember Subin,  
21 Yes.  
22  
23 Council Clerk,  
24 Mr. Silverman?  
25  
26 Councilmember Silverman,  
27 Yes.  
28  
29 Council Clerk,  
30 Mr. Knapp?  
31  
32 Councilmember Knapp,  
33 Yes.  
34  
35 Council Clerk,  
36 Mr. Andrews?  
37  
38 Councilmember Andrews,  
39 Yes.  
40  
41 Council Clerk,  
42 Mr. Perez?



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Councilmember Perez,  
Yes.

Council Clerk,  
Ms. Praisner?

Councilmember Praisner,  
Yes.

Council Clerk,  
Mr. Leventhal?

Council President Leventhal,  
Yes. The bill passes 9-0. We now have before us ZTA 05-16, Workforce Housing. Are there additional amendments to that ZTA? Ms. Praisner.

Councilmember Praisner,  
Yes, I have two. I believe it's on Circle 6 of the ZTA, lines 49 through 53 which allows the Planning Board to exceed the density or residential FAR limit established in a Master Plan or Sector Plan, and I would propose to delete lines 49 through 53. I believe these things should be done through the Master Plan process, not outside the Master Plan process where the Master Plans have specific limits associated with them.

Council President Leventhal,  
Chairman Silverman.

Councilmember Silverman,  
I'm going to oppose this. This is the same discussion we had in connection with the MPDU legislation. As a practical matter, particularly given what we all are aware of in terms of the constraints at the Planning Board in terms of moving through the Master Plan process, there's a pretty basic policy issue here, which is if we want to have -- as we discussed last year -- if we want to have affordable housing or in this case, Workforce or what some have dubbed middle-class housing, what we are talking about is a process of suggesting that on balance, it's okay to put another floor on a high-rise building in an urban area. That's basically what the effect as a practical matter is of this Zoning Text Amendment. And I think that it's unrealistic to expect that we're going to see any movement in terms of the implementation of any of this housing if we essentially say that the Master Plan or Sector Plans have to be capped until we change them. I suppose we could then have an endless series of proposed limited Master Plan amendments, but that seems to be a process, sort of a form over substance issue. I think the whole purpose of this legislation, like our MPDU revisions, is to address the





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1 challenge a we've got and to do it in a way that balances out competing interests, and in  
2 this case considering the constraints on where the legislation would apply to urban  
3 areas, I think it's reasonable to suggest that an additional floor for Workforce Housing is  
4 not going to substantially impact the areas that it applies to, and on balance will provide  
5 the housing we want to see happen.

6  
7 Council President Leventhal,

8 Okay. Let me just say to my colleagues that it is the length of debate that will determine  
9 when we wrap this up. The issue is fairly clear here. There are a lot of lights on this. It  
10 may not require a lot of explanation of our points of view. Ms. Floreen?

11  
12 Councilmember Floreen,

13 Thank you. I sure would like to be able to do a lot of these things through Master Plan  
14 efforts, but we simply don't have the resources or the time. And frankly, if we were to do  
15 this through Master Plan by Master Plan initiative, we would end up with totally  
16 inconsistent policies across the County. I think the object here is to establish a County  
17 policy, make sure it is fairly and consistently implemented in really a few areas where  
18 this will indeed, apply, which is just the metro policy areas. That's where we anticipate  
19 development, that's where we encourage new construction, and that's where it can best  
20 be accommodated where most of the infrastructure is already in place. If we're going to  
21 establish policy, I think we have to do it consistently and across the board and that's  
22 what this achieves.

23  
24 Council President Leventhal,  
25 Mr. Subin?

26  
27 Councilmember Subin,

28 Thanks, Mr. President. When this bill was first introduced and when this idea first came  
29 up all too long ago, I was never under the impression that this was supposed to be a  
30 zero-sum game, which is basically what the amendment would do. The issue of putting  
31 Workforce Housing on the ground was to address a problem, not to create another  
32 problem. And if we are to get to the point of saying this is a zero-sum game, we do  
33 create a problem. The problem we have right now is there is far too much demand for  
34 far too few units. And if you get the number of units the same, the demand is then, in  
35 and of itself, going to push the price up marginally, incrementally, a lot, who knows?  
36 Take whatever assumptions you want, put them in a black box, and the answer will  
37 come out. But clearly there will be an impact. For four years here, our colleague Tom  
38 Perez has been talking about unintended consequences. And I believe if this  
39 amendment passes, it will have those unintended consequences. This is a policy. All  
40 policies have impacts and we need to accept that. And there is going to be an impact to  
41 letting those who serve this County day in and day out, many of whom put their lives on



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1 the line, to allow them to live here. And I think that the price that we pay as a community  
2 to do that is well worth it.

3  
4 Council President Leventhal,  
5 Okay, the vote is on the amendment proposed by Ms. Praisner and seconded by Mr.  
6 Andrews. Those in favor of the amendment regarding the Master Plan requirement for  
7 height will signify by raising their hands. It is Mr. Andrews and Ms. Praisner. Those  
8 opposed will signify by raising their hands. It is Mr. Knapp, Mr. Perez, Mr. Denis, Ms.  
9 Floreen, Mr. Subin, Mr. Silverman, and myself. The amendment is defeated 7-2. Are  
10 there additional amendments to ZTA? Ms. Praisner?

11  
12 Councilmember Praisner,  
13 I not going to make the other amendment that I would have made that would have  
14 restricted the Planning Board's ability to permit additional density FAR building height in  
15 property that adjoins or adjacent to single-family residential development. I would have  
16 modified that to say development that is not within the Metro Station Policy area. In  
17 other words the edges, which I think could very well be impacted, but given the most  
18 recent vote, I doubt that that would pass as well.

19  
20 Council President Leventhal,  
21 Okay, are there any further amendments to that ZTA? If not, the vote is on Zoning Text  
22 Amendment 05-16. The clerk will call the roll.

23  
24 Council Clerk,  
25 Mr. Denis?

26  
27 Councilmember Denis,  
28 Yes.

29  
30 Council Clerk,  
31 Ms. Floreen?

32  
33 Councilmember Floreen,  
34 Yes.

35  
36 Council Clerk,  
37 Mr. Subin?

38  
39 Councilmember Subin,  
40 Yes.

41  
42 Council Clerk,



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1 Mr. Silverman?  
2  
3 Councilmember Silverman.  
4 Yes.  
5  
6 Council Clerk,  
7 Mr. Knapp?  
8  
9 Councilmember Knapp,  
10 Yes.  
11  
12 Council Clerk,  
13 Mr. Andrews?  
14  
15 Councilmember Andrews,  
16 Yes.  
17  
18 Council Clerk,  
19 Mr. Perez?  
20  
21 Councilmember Perez,  
22 Yes.  
23  
24 Council Clerk,  
25 Ms. Praisner?  
26  
27 Councilmember Praisner,  
28 Yes.  
29  
30 Council Clerk,  
31 Mr. Leventhal?  
32  
33 Council President Leventhal,  
34 Yes. The Zoning Text Amendment carries 9-0. That is the end of the Council's business  
35 for today. We are adjourned.  
36